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# **NAVAL POSTGRADUATE SCHOOL**

**MONTEREY, CALIFORNIA**

## **THESIS**

**THE ENEMIES LIST: THE FOREIGN TERRORIST  
ORGANIZATION LIST AND ITS ROLE IN DEFINING  
TERRORISM**

by

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March 2014

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**THE ENEMIES LIST: THE FOREIGN TERRORIST  
ORGANIZATION LIST AND ITS ROLE IN DEFINING TERRORISM**

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Submitted in partial fulfillment of the  
requirements for the degree of

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(HOMELAND DEFENSE AND SECURITY)**

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## **ABSTRACT**

The United States defines terrorism through the lists it maintains identifying those who are engaged in, support, and/or facilitate terrorism. One such list is the Foreign Terrorist Organization (FTO) list. Because the FTO designation process occurs without the organization's knowledge or ability to challenge the evidence, uses classified information to make the determination, and has limited judicial oversight, concerns have been expressed that the Executive Branch has too much discretion in this process. The concerns are exacerbated by the perception that political motivations dominate the decision-making process.

Using content analysis, the FTO list is analyzed using a quantitative and qualitative approach. First, the terrorist designation processes used in allied countries is examined, and the list is analyzed by reviewing FTO decisions made before and after 9/11. Through an analysis of the annual State Department country reports describing the FTOs, the nonstatutory factors that influence FTO decisions emerge, and include whether a group attacked Israel or other allied nation of strategic interest to the United States, attacked the United States or its citizens, or is affiliated with al Qaeda. These nonstatutory factors and their application to U.S. counterterrorism strategy, is how the United States defines terrorism at any point in time.



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## LIST OF ACRONYMS AND ABBREVIATIONS

17N	Revolutionary Organization 17 November
AAA	Asbat al-Ansar
AAB	Abdallah Azzam Brigades
AAD	Ansar al-Dine
AAI	Ansar al-Islam
AAMB	Al-Aqsa Martyrs Brigade
AEDPA	Antiterrorism and Effective Death Penalty Act of 1996
ANO	Abu Nidal Organization
AOI	Army of Islam
AQ	al-Qa'ida
AQAP	al-Qa'ida in the Arabian Peninsula
AQI	al-Qaida in Iraq
AQIM	al-Qaida in the Islamic Maghreb
AQY	al-Qa'ida in Yemen
AS	al-Shabaab
ASG	Abu Sayyaf Group
ASIO	Australian Security Intelligence Organization
AUC	United Self Defense Forces of Colombia
AUM	Aum Shinrikyo
CFR	Code of Federal Regulation
CIRA	Continuity Irish Republican Army
CPP/NPA	Communist Party of the Philippines/New People's Army
DFLP	Democratic Front for the Liberation of Palestine -Hawatmeh Faction
DHKP/C	Revolutionary People's Liberation Party/Front
DHS	Department of Homeland Security
DOD	Department of Defense
ELN	National Liberation Army
ETA	Basque Fatherland and Liberty
EU	European Union
FBI	Federal Bureau of Investigation
FARC	Revolutionary Armed Forces of Colombia
FPMR	Manuel Rodriguez Patriotic Front Dissidents
FTO	foreign terrorist organization



GIA	Armed Islamic Group
GICM	Moroccan Islamic Combatant Group
GSPC	Salafist Group for Call and Combat
HQN	Haqqani Network
HUJI	Harakat ul-Jihad-i-Islami
HUJI-B	Harakat ul-Jihad-i-Islami/Bangladesh
HUM	Harakat ul-Mujahidin
IG	Gama'a al-Islamiyya (Islamic Group)
IJU	Islamic Jihad Union
IM	Indian Mujahedeen
IMU	Islamic Movement of Uzbekistan
IRA	Irish Republican Army
JAT	Jemaah Anshorut Tauhid
JEM	Jaish-e-Mohammed
JI	Jemaah Islamiya
JRA	Japanese Red Army
JUF	Jamaat ul-Furqan
KACH	Kahane Chai
KH	Kata'ib Hizballah
KUI	Khuddam ul-Islam
LeT	Lashkar-e Tayyiba
LIFG	Libyan Islamic Fighting Group
LJ	Lashkar i Jhangvi
LTTE	Liberation Tigers of Tamil Eelam
MEK	Mujahedin-e Khalq Organization
MRTA	Tupac Amaru Revolution Movement
MUJAO	Movement for Unity and Jihad in West Africa
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
NPS	Naval Postgraduate School
PFLP	Popular Front for the Liberation of Palestine
PFLP-GC	PFLP-General Command
PIJ	Palestinian Islamic Jihad
PJCIS	Parliamentary Joint Committee on Intelligence and Security
PKK	Kurdistan Workers Party
PLF	Palestine Liberation Front
PLO	Palestinian Liberation Organization

PMOI	People's Mojahedin Organization of Iran (an aka for the MEK)
POAC	Proscribed Organizations Appeals Commission
RIRA	Real Irish Republican Army
RN	Revolutionary Nuclei
RS	Revolutionary Struggle
SDT	specially designated terrorist
SDGT	specially designated global terrorist
SDN	specially designated nationals and blocked person
SL	Shining Path
START	Study of Terrorism and Responses to Terrorism (START)
TEL	terrorism exclusion list
TTP	Tehrik-e Taliban Pakistan
U.K.	United Kingdom
U.S.	United States

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## **EXECUTIVE SUMMARY**

One way in which the United States defines terrorism is through the lists it maintains that identifies foreign governments, organizations, and individuals who are engaged in, support, or facilitate terrorism throughout the world. One list that has been subjected to increasing scrutiny and criticism is the foreign terrorist organization (FTO) list. Currently, 57 organizations appear on the FTO list. Once on the FTO list, it is relatively difficult to be removed. In fact, since the list began in 1997, only nine groups have been removed or “delisted.”

The FTO designation decision rests exclusively with the Executive Branch, but it is becoming increasingly influenced by actions taken by the legislative and judicial branches of government. This increasing involvement appears to be based on a concern that the FTO designation process places too much power in the hands of the Executive Branch with little oversight. Because the designation process takes place without the organization’s knowledge or ability to challenge the evidence relied upon, uses classified information from the intelligence community in making the determination, and has limited judicial oversight, concerns have been expressed that the Executive Branch has too much discretion in this process.

Many of the concerns about the designation process appear to be based on a lack of understanding about, and an inability to identify, the nonstatutory factors influencing the FTO designations. Identifying and understanding the factors that influence the process could provide the assurances needed that the designation process is thorough and expeditious, the nonstatutory factors are being applied consistently among all foreign organizations, may minimize the concern that political issues are overly influencing the process, and may help demystify the designation process.

As a result, this research focuses on the following.

- Whether the nonstatutory factors that influence the Secretary of State’s decision to designate a terrorist organization to the FTO list can be identified.

- Whether, despite not having a single universally accepted definition of terrorism, the FTO list is the mechanism through which the United States actually defines terrorism.

The Secretary of State has never publicly identified the nonstatutory factors that influence the FTO decision. All the terrorist organizations on the FTO list have a history of violent terrorist acts. While all the FTOs have that characteristic in common, this factor does not automatically result in all terrorist groups who kill civilians being added to the FTO list, since by some counts, there are over 600 known terrorist groups in the world.

A content analysis research approach was used to evaluate FTOs. The research first analyzed the terrorist organization lists used by allied countries, namely the United Kingdom (U.K.), Australia, and Canada. Each of these countries maintains its own independent list with procedures legislatively adopted by that country to determine which groups are added. In addition, the Executive Branch designates each country's terrorist organizations, with an oversight function performed by other branches of government. An evaluation is conducted of each country's designation process, the oversight and review conducted, and the public disclosure mechanisms.

The United Kingdom, Australian, and Canadian models were selected for evaluation because the forms of governance, the nature of the terrorist threats, and the public reaction to government actions are most similar to the United States. Therefore, analyzing these designation models, and the advantages and disadvantages they present, can aid in the evaluation of the U.S. system and whether modifications should be adopted to improve the U.S. designation method. The designation models from allied nations offer insight into modifications the United States could adopt to identify the nonstatutory factors that influence the designation process and to enhance disclosure of that information. While all designation models are criticized, the UK, Australian, and Canadian models suggest that more could be done within the U.S. system to clarify the factors being weighed in making FTO determinations.

The U.S. FTO list was then analyzed by reviewing government reports issued, namely the State Department annual Country Reports on Terrorism (previously called

Patterns of Global Terrorism, and hereinafter, collectively referred to as “country reports”) from 1997, when the FTO list was statutorily created, through to the 2012 country reports, the last report issued prior to publication of this research. In each annual report, the State Department provides the following categories of information about each individual FTO: the date on which the FTO was designated by the United States, a description of the FTO that frequently includes the group’s origin, a summary of the FTO’s recent activities, the location of the FTO’s operations, the FTO’s current strength, and the FTO’s sources of funding or support. The information published in the country reports for each FTO from 1997 to 2012 was gathered into one database and compared using a quantitative and qualitative approach.

While the FTO list can be analyzed as a whole, to include all the groups that have been designated since the inception of the FTO list, analyzing the FTO list based on whether the organizations were designated before or after 9/11 is a more appropriate delineation for analysis. Analyzing the list in this manner also demonstrates the dramatic changes that occurred in American counterterrorism policy as a result of those terrorist attacks. Prior to 9/11, the dominant terrorism focus of U.S. foreign terrorism policy was on communist insurgent groups that might undermine the government of an allied nation. The second most significant concern was the protection of the State of Israel. Next was the threat of al Qaeda and radical Islam. The fourth concern was the threat to the security of an allied nation. Following 9/11, the overwhelmingly dominant counterterrorism focus of the United States is the threat of al Qaeda and radical Islam. While other areas hold some concern for the country, those areas are minor in comparison to the dominant concern presented by al Qaeda.

The nonstatutory factors used to determine which organizations are added to the list are whether the group is related to al Qaeda, its affiliates, and its associates; lends, supports, or promotes the interests of al Qaeda; attacks a U.S. interest, such as a U.S. embassy, or attacks or harms a U.S. citizen; attacks Israel or attempts to undermine its existence; seeks to undermine a peace process advanced or advocated by the United States; or seeks to undermine a country in a geographical location or region strategically important to addressing U.S. counterterrorism efforts.

The Cynefin Framework assists in understanding the complex FTO decisions. While the FTO list reflects a diverse collection of terrorist organizations that initially appear to represent a disconnected list of organizations, the list, the nonstatutory factors that influence the FTO decisions, and the FTO decision-making process itself, reflect the complex nature of U.S. foreign relations and strategy. It also reflects a predictable, systematic, and logical decision-making process that further supports the conclusion that the list is the mechanism through which the United States defines terrorism.

The FTO list reflects the fact that terrorist threats have evolved over the years, and has shifted from state sponsorship of terrorism, where a country could be identified as the foundation or primary supporter of terrorism, to more independent groups. It also reflects how the United States defines terrorism at any given point in time. Prior to 9/11, the focus of U.S. counterterrorism foreign policy was on neutralizing the threat posed by communist insurgent groups that might undermine the government of an allied nation. Following 9/11, the U.S. focus shifted to al Qaeda, and its associated and affiliated organizations. The shift in focus was appropriate, and is reflective of the evolving definition of terrorism over time. As with the changing definition of terrorism, the nature of the groups represented on the FTO list have also evolved. The FTO list then represents what the United States perceives to be those terrorist organizations that pose the greatest risk to this nation, based on the actions taken by the group. The changes in the list over time reflect the changing priorities and the changing threats and, therefore, reflect how the United States defines terrorism. The FTO list reflects the criteria used by the United States in actually defining terrorism, by highlighting this nation's priorities and identifying its enemies. Similarly, as groups are removed from the FTO list, terrorism is further being re-defined by identifying this country's shifting priorities and those groups perceived to no longer be a threat.

Greater confidence in the FTO designation procedure could be developed by publicly identifying the nonstatutory factors that influence the decisions (and eliminate speculation), articulating these factors clearly, and providing information to the public about these factors. Therefore, it is recommended that the State Department: (1) identify and define the nonstatutory factors that influence the FTO designation process, (2)

publish a robust explanation or justification for the designation, (3) clarify the nature of the evidence that the Secretary of State will weigh in the designation process, and (4) require more frequent review of the FTO list.

The recommendations are aimed at creating greater clarity about the key policy factors to be analyzed, developing a consensus as to the specific factors used among members of the intelligence community, streamlining the process so that it is less time consuming, and avoiding controversy over specific designations. Further, by identifying the nonstatutory factors used to determine an FTO, the courts and Congress can receive the assurances they need that the designation process is thorough and expeditious, and may minimize the concern that political issues are overly influencing the process. Implementation of the recommendations will not detract from the authority of the Executive Branch, but clarify how it exercises its authority without compromising its independence or its foreign policy decisions.



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## ACKNOWLEDGMENTS

*We never know how high we are till we are called to rise. And then, if we are true to plan, our statures touch the skies.*

—Emily Dickinson, *Collected Poems of Emily Dickinson*

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Thank you for helping me in my efforts to touch the sky.

## I. INTRODUCTION

*We are citizens of the world.  
The tragedy of our times is that we do not know this.*

—Woodrow Wilson,  
28th U.S. President

### A. PROBLEM STATEMENT

The U.S. State Department, Department of Homeland Security (DHS), Federal Bureau of Investigation (FBI), and Department of Defense (DOD) each utilize different, and sometimes competing, definitions of terrorism. As noted by securities studies scholar Bruce Hoffman, “there is not a widely accepted or agreed-on definition for terrorism” and each department’s definition “reflects the priorities and particular interests of the specific agency involved.”<sup>1</sup>

One way in which the United States defines terrorism is through the lists it maintains that identifies foreign governments, organizations, and individuals who are engaged in, support, or facilitate terrorism throughout the world. The lists maintained by the U.S. government relevant to the counter-terrorism effort include the state sponsors of terrorism list,<sup>2</sup> the not fully cooperating list,<sup>3</sup> the specially designated terrorists (SDT) list,<sup>4</sup> the specially designated global terrorists (SDGT) list,<sup>5</sup> the specially designated

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<sup>1</sup> Bruce Hoffman, *Inside Terrorism* (Columbia University Press, 2006), 30–31, 35.

<sup>2</sup> 50 U.S.C. App. § 2405(6)(j) (list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>3</sup> 22 U.S.C. § 2781.

<sup>4</sup> 50 U.S.C. § 1701, et seq. (list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>5</sup> Presidential Executive Order 13224 (list maintained by the Department of Treasury, Office of Foreign Assets Control).

nationals and blocked person (SDN) list,<sup>6</sup> the terrorism exclusion list (TEL)<sup>7</sup> list,<sup>8</sup> and the foreign terrorist organization (FTO) list.<sup>9</sup>

This system of lists developed in response to different events, including the takeover of the U.S. embassy in Iran, the first attack on the World Trade Center, the Oklahoma City bombing, and 9/11. As a result, the underlying legislative authority, the penalties for being on each list, and the criteria used for inclusion or removal from each list varies. Satisfaction of the statutory requirements, however, does not necessarily result in an individual or entity being added to the list.<sup>10</sup> For example, the Palestinian Liberation Organization (PLO), Irish Republican Army (IRA), and the Taliban have never been on the FTO list, and Afghanistan and Pakistan have never been on the State Sponsors of Terrorism list. The nonstatutory factors that influence whether an individual or entity is added to or excluded from a list are important to understanding how the United States defines terrorism. Determining those factors, however, is a challenge because the government does not identify them in any comprehensive way.

One list that has been subjected to increasing scrutiny and criticism is the FTO list. Created after the Oklahoma City bombing,<sup>11</sup> as part of the Antiterrorism and

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<sup>6</sup> Audrey Kurth Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, Order Code RL32120 (Washington, DC: Library of Congress, Congressional Research Service, October 21, 2003). (A master list that contains all the other lists—list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>7</sup> Ibid. (Like the FTO list, the TEL includes the names of terrorist organizations, but it has a broader standard for inclusion, is subject to less stringent administrative requirements, and is not challengeable in court).

<sup>8</sup> 8 U.S.C. § 1182 (Section 411 of the *USA Patriot Act of 2001*, providing that the list is to be maintained by the Department of State).

<sup>9</sup> 8 U.S.C. § 1189(a)(1).

<sup>10</sup> See e.g., The group called Boko Haram was not designated in 2012, despite it being considered for designation by the State Department and despite it having committed terrorist acts. H.R. 5822/S.3249 (The Boko Haram Terrorist Designation Act, requiring the State Department to determine whether the organization meets the legal criteria for an FTO designation); John Shiffman, “US to Slap ‘Terrorist’ Label on Nigerian Militants,” *Reuters*, June 20, 2012, <http://www.reuters.com/article/2012/06/20/us-usa-militants-bokoharam-idUSBRE85J1NC20120620>; The Heritage Foundation, *Boko Haram: Obama Fails to Designate Nigerian Sect A Terrorist Organization*, Issue Brief, June 22, 2012; Morgan Lorraine Roach, “The U.S. State Department Should Designate Boko Haram a Foreign Terrorist Organization,” Issue Brief No. 3612, *Heritage Foundation*, May 22, 2012, [http://www.heritage.org/research/reports/2012/05/boko-haram-should-be-designated-as-a-foreign-terrorist-organization#\\_ftn3](http://www.heritage.org/research/reports/2012/05/boko-haram-should-be-designated-as-a-foreign-terrorist-organization#_ftn3).

<sup>11</sup> Department of Justice, “Responding to Terrorism Victims: Oklahoma City and Beyond,” October 2000, <http://www.ojp.usdoj.gov/ovclpublicationsiinfores/respterrorism/chapl.html>.

Effective Death Penalty Act of 1996 (“AEDPA”),<sup>12</sup> it was designed to provide “valuable tools for stopping and punishing terrorists,”<sup>13</sup> and to combat the circumstance, as found by Congress, that “foreign terrorist organizations, acting through affiliated groups or individuals, raise significant funds within the United States, or use the United States as a conduit for the receipt of funds raised in other nations.”<sup>14</sup> The FTO list was first issued in 1997, and included 30 organizations.<sup>15</sup> Currently, 57 organizations appear on the FTO list.<sup>16</sup> Once on the FTO list, it is relatively difficult to be removed. Since the list began in 1997, only nine groups have been removed or “delisted.” While it has existed for only 17 years, the “FTO list has a unique importance not only because of the specific measures undertaken to thwart the activities of designated groups but also because of the symbolic public role it plays as a tool of U.S. counterterrorism policy.”<sup>17</sup>

The FTO designation decision rests exclusively with the Executive Branch, but it is becoming increasingly influenced by actions taken by the legislative and judicial branches of government. This increasing involvement developed from a concern that the FTO designation process places too much power in the hands of the Executive Branch with little oversight. While the D.C. Court of Appeals is statutorily identified as the sole judicial authority empowered to review the Executive Branch’s FTO designations, the court has determined that its review is limited and that it may not review foreign policy decisions of the Executive Branch.<sup>18</sup> Since the designation process occurs without the organization’s knowledge or ability to challenge the evidence relied upon, classified information from the intelligence community is used in making the determination, and

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<sup>12</sup> *Antiterrorism and Effective Death Penalty Act of 1996*, Public Law 104-132, 110 Stat. 1214 (1996).

<sup>13</sup> Presidential Statement, 1996 WL 203049, at \*1 (April 26, 1996).

<sup>14</sup> *Antiterrorism and Effective Death Penalty Act of 1996*, § 301(a)(6), 110 Stat., 1247.

<sup>15</sup> Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 6.

<sup>16</sup> U.S. Department of State, “Foreign Terrorist Organizations,” September 28, 2012, <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

<sup>17</sup> Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 5.

<sup>18</sup> *People’s Mojahedin Organization of Iran (“PMOI”) v. Department of State*, 182 F.3d 17, 23 (D.C. Cir. 1999); Julie B. Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 6 *Cardozo Public Law, Policy & Ethics Journal* (Spring 2008): 547, 554–56.

judicial oversight is limited, concerns have been expressed that the Executive Branch has too much discretion in this process.

As these concerns have grown, the legislative and judicial branches have become increasingly engaged in the designation process. For example, Congress passed the Haqqani Network Terrorist Designation Act of 2012<sup>19</sup> and the Boko Haram Terrorist Designation Act of 2012,<sup>20</sup> requiring the Secretary of State to report to Congress about whether these groups should be designated as FTOs. Also, in 2012, the D.C. Court of Appeals ordered the Secretary of State to decide whether an FTO's petition to be removed from the list should be granted.<sup>21</sup> If the Secretary did not act within the time limit set, the court stated that it would remove the organization from the FTO list. Such action by the courts and Congress were unprecedented.<sup>22</sup>

Concerns over whether the Executive Branch appropriately exercises its authority are exacerbated by the perception that political motivations dominate the decision-making process and that the FTO list will lose its effectiveness if decisions appear to be arbitrary and biased.<sup>23</sup> "Each political exception [] diminishes the credibility and value of the list itself . . . Any apparent inconsistencies in application of the law risk generating skepticism about the consistency of the overall U.S. commitment to counterterrorism."<sup>24</sup> Further, the concern over the politicization of the designation process has also grown

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<sup>19</sup> *Presidential Appointment Efficiency and Streamlining Act of 2011*, Public Law 112–166.

<sup>20</sup> H.R. 5822/S.3249 (The Boko Haram Terrorist Designation Act, requiring the State Department to determine whether the organization meets the legal criteria for an FTO designation).

<sup>21</sup> *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010).

<sup>22</sup> *Ibid.*

<sup>23</sup> Shapiro, "The Politicization of the Designation of Foreign Terrorist Organizations," 566–67, 578–79; Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 9. ("If there are countervailing foreign policy priorities, then [the Secretary's] judgment prevails. Nonetheless, inconsistencies of standards from the perspective strictly of terrorism can make the U.S. appear hypocritical . . .").

<sup>24</sup> Paul Pillar, *Terrorism and U.S. Foreign Policy* (Washington, DC, Brookings Institution Press, 2001), 153; Loch K. Johnson and James J. Wirtz, *Strategic Intelligence, Windows Into a Secret World* (Los Angeles, CA: Roxbury Publishing Company, 2004).

recently due to some FTOs engaging in extensive lobbying efforts to be removed from the list.<sup>25</sup>

The increasing involvement by Congress and the judiciary reflects the growing lack of confidence in the current FTO designation process. Consequently, they will likely increasingly insert themselves into the designation process and increase their oversight to ensure that the Executive Branch, along with the intelligence community, is properly executing their responsibility in evaluating the threats to the United States and being rigorous in the analysis of terrorist organizations.<sup>26</sup>

Many of the concerns about the designation process appear to be based on a lack of understanding about, and an inability to identify, the nonstatutory factors influencing the FTO designations. Identifying and understanding the factors that influence the process could provide the assurances needed that the designation process is thorough and expeditious, the nonstatutory factors are being applied consistently among all foreign organizations, may minimize the concern that political issues are overly influencing the process, and may help demystify the designation process.

To be effective, the designation process must be flexible enough to allow the Executive Branch to consider a variety of factors that will serve the diplomatic and strategic interests of the United States. At the same time, the decision-making process and the list must have credibility. Identifying the nonstatutory factors that influence the decisions and determining the tipping points that result in an entity being added to, excluded from, or removed from the FTO list, could aid in gaining a better understanding of the lists and how the United States defines terrorism.

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<sup>25</sup> Chris McGreal, "Iranian Exiles, DC Lobbyists and the Campaign to Delist the MEK," *The Guardian*, September 21, 2012, <http://www.guardian.co.uk/world/2012/sep/21/iranian-exiles-lobbyists-delist-mek>.

<sup>26</sup> Mark M. Lowenthal, *Intelligence, From Secrets to Policy* (CQ Press, 2012), 217, 223.



## **B. RESEARCH QUESTIONS**

As a result, this research seeks to address the following.

- Whether the nonstatutory factors that influence the Secretary of State's decision to designate a terrorist organization to the FTO list can be identified.
- Whether, despite not having a single universally accepted definition of terrorism, the FTO list is the mechanism through which the United States actually defines terrorism.

## **C. OVERVIEW OF UPCOMING CHAPTERS**

The subsequent chapters more fully explore the FTO process and the designation decisions made since 1997. Chapter II outlines the current FTO designation procedures. Chapter III examines the state of the current literature on FTOs that, for the most part, criticizes the current process without a detailed analysis of the FTO decisions.

Chapter IV outlines the quantitative and qualitative analysis used in this research, beginning with Chapter V's exploration of the terrorist organization lists used by allied countries. The FTO list is analyzed in great detail in Chapters VI and VII, which include a review of the FTO designations before and after 9/11, the recent designations made in 2013 and early 2014, the dormant or inactive FTOs on the list, and the delisted organizations. Through this analysis, the nonstatutory factors that influence the FTO decisions are identified.

Chapter VIII evaluates the FTO decisions in the complex counterterrorism environment. Chapter IX examines the relevance of the FTO decisions to U.S. counterterrorism strategy and concludes that the factors used in the FTO decision-making process is, in fact, the mechanism through which the United States defines terrorism at any point in time. Chapter X concludes with recommendations to assist in addressing the criticisms of the FTO process found in the literature. The recommendations are aimed at offering clarity and transparency to the FTO decisions made by the Secretary of State.

## II. BACKGROUND: THE FTO DESIGNATION PROCESS

*The world is not going to be saved by legislation.*

—William Howard Taft,  
27th U.S. President

The secretary of state is authorized to designate an organization as a “foreign terrorist organization” if three conditions exist.

1. The organization is a foreign organization.
2. The organization engages in terrorist activity, or retains the capability and intent to engage in terrorist activity or terrorism.
3. The terrorist activity threatens the security of U.S. citizens or the national security of the United States.<sup>27</sup>

Criminal penalties apply to anyone who knowingly provides “material support or resources”<sup>28</sup> to a designated FTO, deportation consequences apply to representatives and members of a designated FTO,<sup>29</sup> and assets may be frozen.<sup>30</sup>

The FTO list is aimed at: (1) curbing terrorism financing and encouraging other nations to do the same, (2) stigmatizing and isolating designated terrorist organizations internationally, (3) deterring donations or contributions to and economic transactions with named organizations, (4) heightening public awareness and knowledge of terrorist organizations, and (5) signaling to other governments our concern about named organizations.<sup>31</sup>

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<sup>27</sup> *The 1996 Antiterrorism and Effective Death Penalty Act (AEDPA)*; 8 U.S.C. § 1189 (a) (1).

<sup>28</sup> The term “material support or resources” is defined in 18 U.S.C. § 2339A(b)(1) as “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who maybe or include oneself), and transportation, except medicine or religious materials.”

<sup>29</sup> 8 U.S.C. §§ 1182 (a)(3)(B)(i)(IV)-(V), 1227 (a)(1)(A).

<sup>30</sup> 18 U.S.C. § 2339B(a)(2). (U.S. financial institutions possessing or controlling any funds in which a designated FTO or its agent has an interest are required to block all transactions involving those funds).

<sup>31</sup> U.S. Department of State, “Foreign Terrorist Organizations.”

Once an organization is identified as a potential FTO, the State Department prepares a detailed “administrative record” on the organization, which contains a compilation of information, typically including both classified and open source information, which demonstrates that the statutory criteria for designation have been satisfied.<sup>32</sup> The process requires the State Department, Department of Treasury, Department of Justice, and the intelligence community to collaborate in providing relevant information and in evaluating the information collected. Designations normally occur after an involved interagency process; but the secretary of state makes the ultimate decision.<sup>33</sup>

If the secretary of state, in consultation with the attorney general and the secretary of the treasury, decides to make the FTO designation, Congress is notified of the secretary’s intent to designate the organization seven days before the designation is published in the Federal Register, as section 219 of the Immigration and Nationality Act requires. Upon the expiration of the seven-day waiting period, and in the absence of Congressional action to block the designation, notice of the designation is published in the Federal Register, at which point the designation takes effect. The FTO designations remain in effect until set aside by judicial review, an act of Congress, or repeal by the secretary of state.<sup>34</sup>

Organizations can be removed from the list at any time. The Secretary may revoke a designation upon determining either that the circumstances that were the basis for the designation have changed, or that the national security of the United States warrants a revocation of the designation.<sup>35</sup> The secretary must review each designation at

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<sup>32</sup> U.S. State Department, “Terrorism Designations FAQs, Fact Sheet,” July 10, 2012, <http://www.state.gov/r/pa/prs/ps/2012/07/194808.htm>.

<sup>33</sup> Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*.

<sup>34</sup> 8 U.S.C. § 1189 (Before the *Intelligence Reform and Terrorism Prevention Act of 2004* amended 8 U.S.C. § 1189, FTO designations were effective for two years and subject to re-designation by the Secretary).

<sup>35</sup> *Ibid.*

minimum every five years,<sup>36</sup> but can review it sooner if the FTO challenges its designation.<sup>37</sup>

As originally enacted, AEDPA required the secretary of state to review FTO designations every two years.<sup>38</sup> Under that process, the Secretary either renewed the designation every two years or allowed it to lapse.<sup>39</sup> The statute was revised so that the Secretary's designation no longer lapses. Instead, every two years, an organization listed as an FTO can file a petition for delisting.<sup>40</sup> If no petition is filed, the Secretary must review the designation every five years to determine whether the designation shall remain or be revoked.

The overall designation process is graphically depicted in Figure 1.

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<sup>36</sup> 8 U.S.C. § 1189 (a)(4)(C)(i); U.S. Department of State, "Foreign Terrorist Organizations."

<sup>37</sup> 8 U.S.C. § 1189 (a)(4)(B)(ii); U.S. Department of State, "Foreign Terrorist Organizations."

<sup>38</sup> *Antiterrorism and Effective Death Penalty Act of 1996*, 110 Stat. 1214 (amends § 219 of the *Immigration and Nationality Act* (Public Law 82-414; 8 U.S.C. § 1101 et. seq.) [hereinafter AEDPA].

<sup>39</sup> See AEDPA, "Designation of Foreign Terrorist Organizations," 8 U.S.C. § 1189(a)(4)(B) (2003).

<sup>40</sup> 8 U.S.C. § 1189 (a)(4)(B)(ii); U.S. Department of State, "Foreign Terrorist Organizations"; Under the AEDPA, the Secretary may designate an entity an FTO if: (1) "the organization is a foreign organization," (2) "engages in terrorist activity . . . or terrorism . . . or retains the capability and intent to [do so]," and (3) "the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States"; 8 U.S.C. § 1189(a)(1).

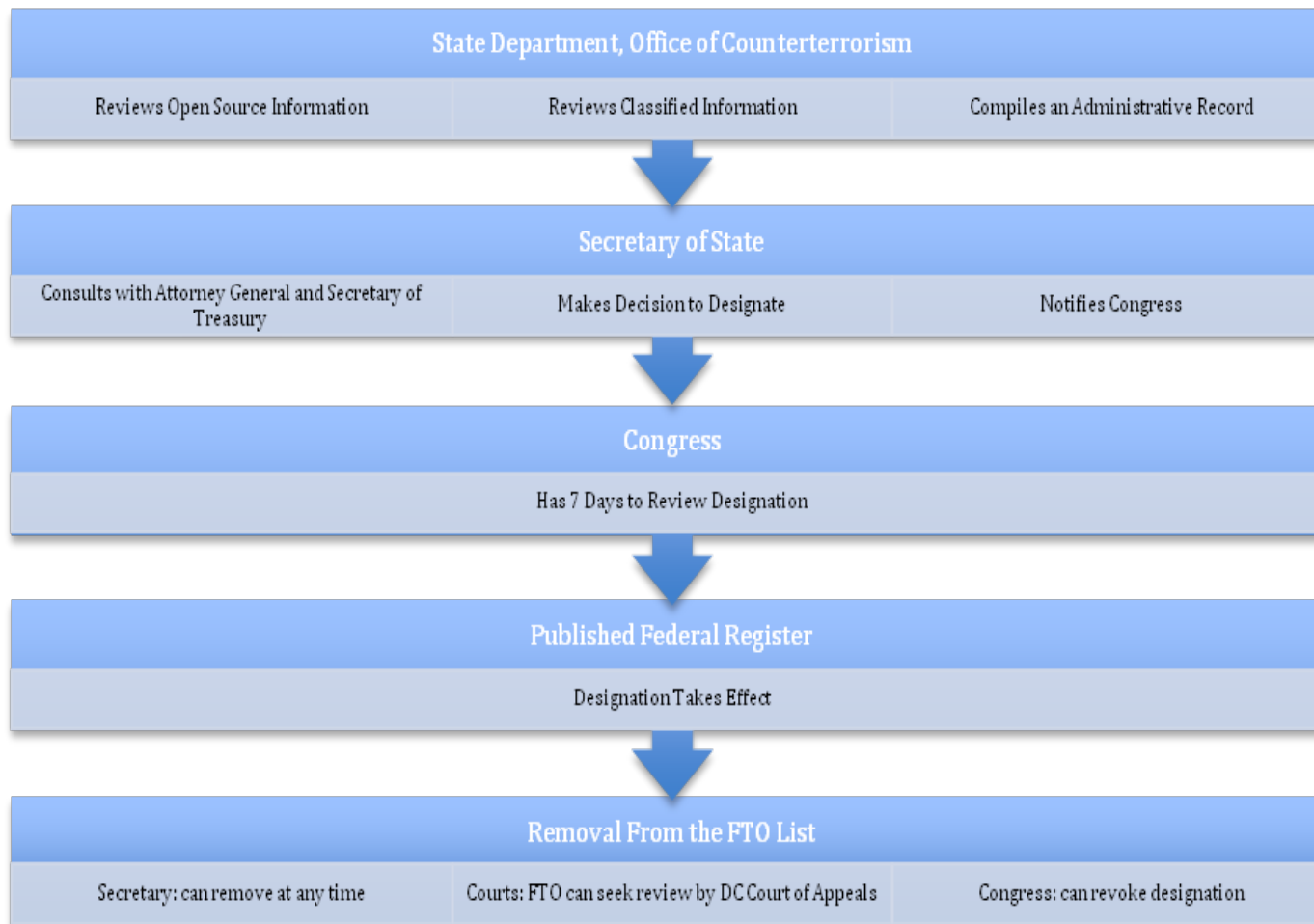


Figure 1. FTO Designation Process.

### III. LITERATURE REVIEW

*The best way to enhance freedom in other lands is to demonstrate here  
that our democratic system is worthy of emulation.*

—Jimmy Carter,  
39th U.S. President

The FTO designation has been subjected to criticism for the unreliable nature of the information used in making the determinations, inconsistency in the types of groups placed on the FTO list, decision-making authority being so heavily placed in the Executive Branch with little oversight, and political issues that may unduly sway the process. Nevertheless, based on the research conducted for this review, no comprehensive studies analyze the overall decisions made to include organizations on the FTO list. Instead, most of the literature on the FTO list centers around specific criticisms of the list, the process used to designate the groups, the apparent inconsistency in the decisions made, or criticism about specific groups being added or omitted from the FTO list. These criticisms are presented without providing any comprehensive evaluation of the entire FTO list.

#### A. THE DESIGNATION PROCESS

The FTO designation process has been criticized as a lengthy, cumbersome process that is slow to respond to the evolving nature of international terrorist groups. Some argue that any list could not accurately reflect the blurred and ever-changing organizational lines that characterize modern international terrorism.<sup>41</sup> While concern exists over creating an accurate list of the greatest terrorism threats, the process involved for creating the FTO list is considered particularly cumbersome. As noted by Paul Pillar, author of *Terrorism and U.S. Foreign Policy*, “The initial designation of thirty groups was a long and (for the officials involved) painful process that consumed enormous time and attention in each of the agencies involved . . . the process was not completed until

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<sup>41</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 153.

nearly a year and a half after [the FTO list] had become law.”<sup>42</sup> In addition, Pillar criticizes the FTO process for its inability to adapt quickly to changing circumstances. “The fact that Al Qaeda was not one of the groups listed in October 1997 (just ten months before the bombings in East Africa) illustrates the difficulty the system has in responding promptly to the emergence even of a group that directly threatens U.S. interests.”<sup>43</sup>

## **B. THE NATURE OF THE MATERIALS RELIED UPON IN THE DESIGNATION PROCESS**

The nature of the materials that can be contained in the administrative record is very diverse. The literature notes that nothing prevents the secretary of state from relying on third-hand accounts, media stories, and hearsay.<sup>44</sup> As a result, concerns have been expressed that the information the Secretary relies upon could be unreliable or untrue, that the government relies on “makeshift procedures,” and that the validity of the designations may depend upon the quality of the information presented to the secretary of state.<sup>45</sup>

While on one hand the literature argues that the administrative record could be unreliable and contain false information, the studies and legal authorities that the literature relies upon do not identify a single instance in which inaccurate information was contained in the administrative record or led to a group being wrongly designated. In fact, the criticism that the information relied upon could be unreliable is undermined by those who observe that the designation process is too cumbersome because the administrative record must be sufficient to withstand judicial scrutiny.<sup>46</sup> As noted by one author, the designation process is impacted by the fact that the FTO designation may

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<sup>42</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 154.

<sup>43</sup> *Ibid.*

<sup>44</sup> *People’s Mojahedin Organization of Iran (“PMOI”) v. Department of State*, 182 F.3d 17, 19 (D.C. Cir. 1999); Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 547, 554–56.

<sup>45</sup> *Ibid.*

<sup>46</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 154.

undergo judicial review.<sup>47</sup> In fact, the Secretary sometimes considers the ability to win in court as an element in the decision whether to designate.<sup>48</sup> If the Secretary cannot amass a sufficient administrative record, the designation may not occur. As a result of the need to create an administrative record that can withstand evaluation by a judicial officer, which the literature indicates is a time-consuming and cumbersome process, the criticism that the administrative record could be unreliable seems misplaced.

### **C. THE VARIETY OF GROUPS THAT ARE DESIGNATED AS FTOS**

Some have noted that the FTO list is a mixture of the “apples and oranges” of terrorist organizations, and reflects “the shift from well-organized, localized groups supported by state sponsors to loosely organized, international networks of terrorists.”<sup>49</sup> For example, the FTO list includes the following.

- Large multidimensional groups based on Islamic ideologies (such as Hamas, Hezbollah), Marxism (the FARC and ELN), a combination of the two (MEK)
- Ethnic-based groups (LTTE, PKK, ETA)
- Palestinian groups seeking a peaceful solution (Popular Front for the Liberation Front of Palestine) and those that do not (PLFP-GC, Palestine Liberation Front, Abu Nidal Organization)
- Non-Palestinian leftist groups
- Small but deadly European groups (November 17, Revolutionary People’s Struggle in Greece, and the Revolutionary People’s Liberation Party/Front in Turkey)
- Radical Islamists (al Qaida and its associated organizations)
- Small Jewish groups (Kach and Kahane Chai)
- Idiosyncratic groups (Aum Shinrikyo)

The FTOs on the list vary in size, strength, activity, ideology, goals, outside support, anti-U.S. orientations, and whether the group is waning or waxing.<sup>50</sup>

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<sup>47</sup> Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 566; Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 9.

<sup>48</sup> Ibid.

<sup>49</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 153.

<sup>50</sup> Ibid.



Al Qaeda is on the same list as groups whose mission does not involve harming the United States. The danger of the list appearing to contain a list of co-equal organizations has been subject to ongoing concern about the designation process.

Besides the general drawback of encouraging a truncated view of these organizations by looking at all of them through a single lens, there is the more specific drawback of possibly burning bridges to groups with which the United States might want to deal in the future. In a worst case, such bridge-burning may make a group more inclined to attack U.S. interests directly.<sup>51</sup>

Some analysis has been conducted to determine whether, despite the apparent differences in objectives of the designated FTOs, the groups on the list, in fact, possess a common characteristic. Such an analysis is instructive in explaining how such desperate groups are on one unified list. According to a review conducted in an *Indiana Law Review* article titled “The Material Support Prosecution and Foreign Policy,” all the groups on the FTO list have used violent attacks on civilians as a means to intimidate or coerce a sovereign government.<sup>52</sup> In reviewing the State Department country reports, which outline the FTOs and some of their history, this analysis appears to be an accurate common denominator of all the groups on the FTO list.<sup>53</sup> Consequently, groups that engage in violent activity in pursuit of political goals run the risk of being declared an FTO by the United States.<sup>54</sup> However, not all groups that engage in such actions will be designated.<sup>55</sup> In other words, while the analysis can assist in understanding why groups with different goals can all be clustered together on a single list, it does not explain which groups or factors lead a group being added to or omitted from the FTO list.<sup>56</sup>

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<sup>51</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 153.

<sup>52</sup> Wadie E. Said, “The Material Support Prosecution and Foreign Policy,” 86 *Indiana Law Review* 543 (Spring 2011): 566–67

<sup>53</sup> Department of State, *Country Reports on Terrorism 2011*, released July 2012.

<sup>54</sup> Said, “The Material Support Prosecution and Foreign Policy,” 567.

<sup>55</sup> *Ibid.* (for example, the Cambodian Freedom Fighters, the IRA, and the PLO).

<sup>56</sup> *Ibid.*, 568.

#### **D. THE RISK OF ABUSE BY THE EXECUTIVE BRANCH**

The literature suggests that whether an organization will or will not be designated an FTO depends on the third element required for designation, whether the organization poses a threat to U.S. national security. The evaluation of this element, and the public policy factors involved in this evaluation, is done at the exercise of the secretary of state's discretion and is not subject to judicial review. As a result, a common criticism of the FTO designation process is that it puts too much power in the hands of the Executive Branch in determining which organizations will be named a terrorist organization, and that little effective oversight of the Executive Branch occurs in this decision-making process.<sup>57</sup>

Some members of the judiciary have also made this criticism. The D.C. Circuit Court of Appeals is statutorily identified as the sole judicial authority empowered to review the FTO designation, when the organization challenges its designation. The court has determined that it can only review the first two statutory elements of the designation process, that is, whether the organization is a foreign entity and whether it engages in terrorist activities. The final statutory factor, whether the terrorist activity committed by the organization threatens U.S. security, is not subject to judicial review<sup>58</sup> because foreign policy decisions of the Executive Branch are beyond the judicial function of the court.<sup>59</sup> Not all judges agree, as Judge Alex Kozinski of the Ninth Circuit Court of Appeals, wrote in a non-binding opinion:

I can understand the panel's resistance to interfere with matters of National Security, but the entire purpose of the terrorist designation process is to determine whether an organization poses a threat to national

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<sup>57</sup> Shapiro, "The Politicization of the Designation of Foreign Terrorist Organizations," 548 ("Congress tightened its reign on the Judicial Branch in 2004, and amended the designation statute to impose greater limitations on the opportunities for judicial review"); *Intelligence Reform and Terrorism Prevention Act of 2004*, Public Law 108-458, Section 7119, 118 Stat. 3638, 3801-03 (2004).

<sup>58</sup> *People's Mojahedin Organization of Iran ("PMOI") v. Department of State*, 182 F. 3d 17, 23 (D.C. Cir. 1999); Shapiro, "The Politicization of the Designation of Foreign Terrorist Organizations," 555.

<sup>59</sup> *People's Mojahedin Organization of Iran*, 182 F. 3d at 23 ("These are political judgments, 'decisions of a kind for which the judiciary has neither aptitude, facilities nor responsibility and have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.'"); Shapiro, "The Politicization of the Designation of Foreign Terrorist Organizations," 555 ("the court determined that such review of the foreign policy of the Executive Branch was beyond the judicial function for a court").

security under the constitution, the State Department does not have carte blanche to label any organization it chooses an FTO and make a criminal out of anyone who donates money to it. Far too much political activity could be suppressed under such a regime.<sup>60</sup>

Others who have evaluated the FTO designation process have expressed this sentiment. In short, they argue that because the statutory scheme minimizes the potential an organization can overturn its FTO designation, too much power over the designation is consolidated in the Executive Branch.<sup>61</sup>

Among the concerns expressed is that the designation process occurs without the organization's knowledge or ability to challenge the evidence relied upon. Also, to the extent that classified information is relied upon, the organization will never have the opportunity to review or counter the information.<sup>62</sup> This fact, combined with the lack of guidance on what factors might allow a group to overcome its designation, creates the concern that the Executive Branch may not exercise its power appropriately.<sup>63</sup> The appropriate exercise of the Executive Branch's power and the concern over the power being exercised appropriately, is exacerbated by the fact that in the 17 years since the FTO list was created, the FTO designation has been challenged in court by only a few organizations and no designation has ever been repealed by a court or by Congress. While the literature highlights this concern, no author has identified a case in which the Executive Branch inappropriately exercised its power.

## **E. THE INFLUENCE OF POLITICAL CONSIDERATIONS**

The concern that the Executive Branch will inappropriately exercise its authority is exacerbated by the perception that political motivations can dominate the decision-making process, and that, if it does, the FTO list will lose its effectiveness since decisions would appear arbitrary and bias.

As Paul Pillar noted:

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<sup>60</sup> *United States v. Afshari*, 446 F.3d 915, 915–22 (9th Cir. 2006).

<sup>61</sup> Said, “The Material Support Prosecution and Foreign Policy,” 562, 575–77.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

The Secretary of State can inject political and diplomatic considerations into decisions on designating FTOs. . . Each such political exception, however, diminishes the credibility and value of the FTO list itself. The law only authorizes, rather than requires, the Secretary to designate any organization that meets the criteria as an FTO, the list has tended to be viewed as a more comprehensive and definitive “A list” of the groups the United States considers terrorist. Any apparent inconsistencies in application of the law risk generating skepticism about the consistency of the overall U.S. commitment to counterterrorism.<sup>64</sup>

Similarly, Julie B. Shapiro, in a *Cardozo Law Review* article titled “The Politicization of the Designation of Foreign Terrorist Organizations: The Effect on the Separation of Powers,” stated:

Though sweeping powers of the State Department the federal government has the ability to ban and effectively close down any cantankerous group it does not like. Foreign policy interests often determine who is added and who is not. As a result, the designation process can appear arbitrary, as certain foreign revolutionary groups are blacklisted while others evade designation.<sup>65</sup>

The specific concerns expressed include that the secretary of state could designate a group as an FTO based on political motivations,<sup>66</sup> apply the law selectively (“one man’s terrorist is another man’s freedom fighter”),<sup>67</sup> use a political agenda as motivations for the designations and rely on factors other than the protections of U.S. national security from terrorist threat,<sup>68</sup> and designate an FTO based on obtaining a desired political appearance of being tough on terrorism.<sup>69</sup>

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<sup>64</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 153.

<sup>65</sup> Robert Dreyfuss, “Colin Powell’s List: The Targeting of ‘Terrorist’ Groups Hard Back to Earlier Repress of Dissent,” *The Nation*, March 25, 2002, 16 (suggesting that “the terrorism lists could be used to justify federal and state assaults against a wide range of dissent groups.”); Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 577.

<sup>66</sup> Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 9. (“If there are countervailing foreign policy priorities, then [the Secretary’s] judgment prevails. Nonetheless, inconsistencies of standards from the perspective strictly of terrorism can make the U.S. government appear hypocritical . . .”; Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 567.

<sup>67</sup> H.R. Rep. No. 104-383 at 179-80 (1995); Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 578.

<sup>68</sup> Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 566; Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 10.

<sup>69</sup> Shapiro, “The Politicization of the Designation of Foreign Terrorist Organizations,” 579.

Shapiro argues that the combination of statutory breath and the lack of judicial oversight empowers the Executive Branch to pick and choose which groups to label as an FTO.<sup>70</sup> Shapiro also notes that the Executive Branch has far-reaching powers to advance a political agenda and blacklist groups based on the current political agenda, that the secretary of state's mission is to advance the foreign policy agenda of the United States and the political agenda of the President, and that those agendas might tempt the Secretary to designate groups opposed to repressive regimes as a tactic.<sup>71</sup> According to Shapiro, the only distinction between freedom fighters and terrorists may be the Executive Branch's predilection for that group or not. When two groups employ the same tactics that fit the FTO definition of terrorist activity, the Executive Branch is choosing to support a group's underlying agenda when it opts not to designate that group as an FTO.<sup>72</sup> Bruce Hoffman makes a similar argument, but focuses on the groups designated on the list, and observes that "nearly a third of the thirty-seven groups [in 2003] on the U.S. State Department's "Designated Foreign Terrorist Organizations" list could just as easily be categorized as guerrillas."<sup>73</sup>

While the literature expresses concerns about the influence of politics in the designation process, the literature fails to identify any organization that has been added to the list based on improper political motives. In fact, very little analysis of the factors that contributed to the inclusion of any group to the FTO list, other than the group's involvement in terrorist activities, was done. While some of the literature recognizes that the list contains groups that threaten U.S. national security and notes that the basis for some groups being on the list is opaque,<sup>74</sup> the literature lacks an analysis of the factors that may have supported inclusion on or exclusion from the FTO list.

The literature, however, occasionally reviews groups not added to the FTO list, and questions their omission based on politics. For example, Paul Pillar questions the

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<sup>70</sup> Ibid., 577.

<sup>71</sup> Ibid., 579.

<sup>72</sup> Ibid.

<sup>73</sup> Hoffman, *Inside Terrorism*, 36; U.S. Department of State, Office of the Coordinator for Counterterrorism, *Patterns of Global Terrorism*, 2003, 113.

<sup>74</sup> Said, "The Material Support Prosecution and Foreign Policy," 562–577.

omission of the IRA from the list, and argues that the Secretary injected political and diplomatic considerations into the decision to exclude the group from the FTO list. According to Pillar, “The IRA certainly qualified for designation under the terms of the statute, and it presented a more significant threat to U.S. interests as defined in the law than did many of the groups that were designated.” Nevertheless, Pillar concludes that the decision to exclude the IRA from the list was probably correct “given that there was more to gain (in terms of counterterrorism, as well as other objectives) from dealing with it as an interlocutor in a peace process than from branding it formally as a terrorist organization.”<sup>75</sup>

Thus, the literature expresses concern over a number of issues ranging from the effectiveness of the designation process itself, to the apparent lack of similarity among the FTOs designated, to the concern about over politicalization of the FTO process and potential abuses by the Executive Branch in exercising its power in this arena. The literature, however, does not analyze all the FTO decisions made to determine whether these criticisms are valid or to determine whether the nonstatutory factors influencing the designation process can be identified. This research seeks to fill this gap by evaluating all FTOs that have been designated since the inception of the list, to determine whether the nonstatutory factors can be identified, and to determine how those factors are applied to complex counter-terrorism decisions.

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<sup>75</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 153; Jonathan D. Stewart, “Balancing the Scales of Due Process: Material Support of Terrorism and the Fifth Amendment,” 3 *Georgetown Journal of Law and Public Policy* (Winter 2005): 311–312 (arguing that the designation process is flawed because the African National Congress would have been designated if the list existed in the 1980s).

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## IV. METHODOLOGY

*Sometimes when people are under stress,  
they hate to think,  
and it's the time when they most need to think.*

—Bill Clinton,  
42nd U.S. President

The object of this study is to identify and evaluate the nonstatutory factors that influence whether an organization will be designated an FTO by the State Department, and to determine whether those factors, and therefore the FTO list itself, is the method through which the United States actually defines terrorism.

The secretary of state has never publicly identified the nonstatutory factors that influence the FTO decision. All of the 57 terrorist organizations on the FTO list have a history of violent terrorist acts that killed civilians. While all the FTOs have that in common, this factor does not automatically result in all terrorist groups that kill civilians being added to the FTO list. By some counts, there are over 648 known terrorist groups in the world.<sup>76</sup> How then does the secretary of state determine which of these hundreds of groups will be included on the U.S.' FTO list?

Due to speculation about the decision-making process, arguments have been made that the list is arbitrary, makes little sense, and that the designation decisions are political.<sup>77</sup> Therefore, a more detailed analysis of the factors that influence the process is needed to better understand the FTO designation decisions. The research seeks to determine whether the factors that influence the FTO designation decisions can be determined by analyzing the groups that have been designated and removed from the FTO list.

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<sup>76</sup> Seth G. Jones and Martin C. Libicki, *How Terrorist Groups End, Lessons for Countering al Qaeda* (Rand Corporation, 2008).

<sup>77</sup> Ibid.



A content analysis research approach was used to evaluate the FTOs. Content analysis is “a detailed and systematic examination of the contents of a particular body of material for the purpose of identifying patterns, themes, or biases.”<sup>78</sup> The research will take a qualitative and quantitative research approach, with the goal of interpreting the data, inductively and deductively, to identify the nonstatutory factors used in the FTO decision-making process.

The research will first analyze the terrorist organization lists used by allied countries, namely the United Kingdom, Australia, and Canada. Each of these countries maintains its own independent list with procedures legislatively adopted by that country to determine which groups are added. In addition, the Executive Branch designates each country’s terrorist organizations, with an oversight function performed by other branches of government. An evaluation is conducted of each country’s designation process, the oversight and review conducted, and the public disclosure mechanisms utilized.

To analyze the U.S. FTO list, the research next reviewed government reports issued, namely the State Department annual Country Reports on Terrorism (previously called Patterns of Global Terrorism, and hereinafter, collectively referred to as “country reports”) from 1997, when the FTO list was statutorily created, through to the 2012 country reports, the last report issued prior to the publication of this research.<sup>79</sup> In each annual report, the State Department provides the following categories of information about each individual FTO: the date on which the FTO was designated by the United States, a description of the FTO that frequently includes the group’s origin, a summary of the FTO’s recent activities, the location of the FTO’s operations, the FTO’s current strength, and the FTO’s sources of funding or support.

The information published in the country reports for each FTO from 1997 to 2012 was gathered into one database. Since the reports contain a limited amount of information about the FTOs, all of the information from all 16 reports was incorporated into the

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<sup>78</sup> Paul D. Leedy and Jeanne Ellis Ormrod, *Practical Research: Planning and Design*, 10th ed. (New Jersey: Pearson, 2013), 148.

<sup>79</sup> U.S. Department of State, *Patterns of Global Terrorism 2001–2003*; U.S. Department of State, *Country Report on Terrorism 2004–2011*.

database. The information was then coded to determine whether themes and patterns developed, and whether the nonstatutory factors that influence the designation process, could be identified.

The specific steps used in the analysis included: (1) reviewing all State Department county reports issued that described the FTOs in order to capture the data, (2) inputting all of the county report information into a single database, and (3) categorizing the data to determine if the designated FTOs follow a pattern, whether the nonstatutory factors that influence the FTO decisions can be identified and whether they are predictable, and whether the nonstatutory factors are being applied consistently across all groups.

To first organize the data, the categories initially used were the same categories presented in the country reports, namely, the date designated, the description of the FTO (for each year the group was named in a country report), the activities of the group (for each year the group was named in a country report), the size of the FTO, the resources of the FTO, and location of its activities.

After all the information from the country reports was organized into a single database, the information for each FTO was further categorized to determine the types of terrorist acts committed, the group's association, if any, to al Qaeda, the location of the organization, the location of the FTO's terrorist activities, whether the FTO killed, attacked or harmed a U.S. citizen, whether the FTO attacked a U.S. business or government interest (such as a U.S. embassy), the date of the FTO's last terrorist attack, countries in which the FTO commits its attacks, whether the FTO was engaged in Iraq or Afghanistan, whether the FTO was engaged in peace negotiations, and whether the FTO is associated with any other FTO.

Finally, the information about each FTO from the country reports was analyzed quantitatively to determine whether references to certain terms or countries increased or decreased over time, as reflected by the number of references to that term in the country reports.

All organizations currently on the FTO list and those that have been removed from the list were included in this study. This consists of a total of 57 current FTOs and nine organizations that have been removed from the FTO list, resulting in a total of 66 organizations reviewed for this study.

## V. TERRORIST ORGANIZATION LISTS MAINTAINED BY ALLIED NATIONS

*Even states that are allies can disagree, for reasons of history, culture and politics, over whether or not members of a certain organisation are terrorists.*

—Michael Head,  
Author of *Crimes Against the State, From Treason to Terrorism*

The process of designating organizations and attempting to minimize their effectiveness by outlawing support for them is now a widely accepted counterterrorism tool used by many countries and organizations, including the European Union (EU) and the United Nations. While the U.S. model has been criticized, the designation process is criticized in other countries as well because it raises questions about the limits on executive power while also challenging the accepted boundaries of the criminal justice system. Also, universal concerns exist about the dominant role played by the executive in the decision-making process and the risk that the public may place an undue amount of pressure on the executive branch that may result in the excessive listing of terrorist groups. It is frequently difficult to understand how certain organizations that have no direct link to a country are proscribed and yet other organizations are not proscribed.

This chapter provides a comparative analysis of the terrorist organization designation processes used in the United Kingdom, Canada, and Australia. While no system is a perfect match to the U.S. system, the United Kingdom, Canada, and Australia were selected for this research due to the similarity in the designation processes used. Each of these countries maintains its own independent list with procedures legislatively adopted by that country to determine which groups are designated. Like the U.S. system, the Executive Branch makes the designation decision with an oversight function performed by other branches of government. Many other countries also have lists of terrorist organizations, but were not included in this analysis due to differences in their designation process that make an analytical comparison less helpful. For example, New Zealand maintains a terrorist organization list pursuant to its Terrorism Suppression

Act.<sup>80</sup> Since the enactment of the Terrorism Suppression Act, the New Zealand government has designated a number of terrorist organizations. However, it only designates organizations that have also been listed by the United Nations. “A primary aim of the New Zealand legislative response has been to bring its law into compliance with United Nations Conventions and determinations about terrorism.”<sup>81</sup> As a result, countries like New Zealand that have a terrorist list that mirror that of the United Nations, or that mirror other multi-country organizations, such as the EU, were not included in this analysis.

The United Kingdom, Australian, and Canadian models were selected for evaluation because the forms of governance, the nature of the terrorist threats, and the public reaction to government actions are most similar to the United States. Therefore, analyzing these designation models, and the advantages and disadvantages they present, can aid in the evaluation of the U.S. system and whether modifications should be adopted to improve the U.S. designation method.

#### A. UNITED KINGDOM

*The purpose of terrorism lies not just in the violent act itself. It is in producing terror. It sets out to inflame, to divide, to produce consequences which they often use to justify further terror.*

—Tony Blair,  
U.K. Prime Minister (1997–2007)

Prior to 2000, the United Kingdom proscribed a number of organizations that existed in Northern Ireland.<sup>82</sup> Under the Terrorism Act of 2000 (which became effective on February 19, 2001), the list expanded to include international terrorist organizations. Fifty-one international organizations are currently proscribed under the Terrorism Act of 2000. Of these, two organizations are proscribed under powers introduced in the

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<sup>80</sup> *Terrorism Suppression Amendment Act 2003* (NZ).

<sup>81</sup> George Williams, “The Rule of Law and the Regulation of Terrorism in Australia and New Zealand,” in *Global Anti-Terrorism Law and Policy*, ed. Victor V. Ramraj, Michael Hor, and Kent Roach (Cambridge: Cambridge University Press, 2005), 550.

<sup>82</sup> Alexander Horne and Diana Douse, *The Terrorism Act 2000: Proscribed Organizations* (House of Commons Library, January 7, 2013 (updated)); *The Prevention of Terrorism (Temporary Provisions) Act 1989* and the *Northern Ireland (Emergency Provisions) Act 1996*.

Terrorism Act 2006, as glorifying terrorism. In addition, 14 additional organizations in Northern Ireland are proscribed under pre-existing legislation.

## **1. The Listing Process**

Under the Terrorism Act, the Home Secretary may proscribe an organization if the Secretary believes the group is “concerned” with terrorism,<sup>83</sup> meaning that the group does the following.

- commits or participates in acts of terrorism
- prepares for terrorism
- promotes or encourages terrorism (including the unlawful glorification of terrorism)
- is otherwise concerned in terrorism<sup>84</sup>

It is a criminal offense to belong to or invite support for a proscribed organization, arrange a meeting in support of a proscribed organization, or wear clothing or carry articles in public that arouse reasonable suspicion that an individual is a member or supporter of the proscribed organization.

Initially, criticism arose that the list of factors lacked clarity in specifying the criteria the Home Secretary would use in determining whether to exercise discretion to add an organization to the list. In response, in 2011, the Home Secretary issued an Explanatory Memorandum to the Terrorism Act and specified that the factors that would be weighed in exercising discretion would include the following.

- the nature and scale of an organization’s activities
- the specific threat that it poses to the United Kingdom
- the specific threat that it poses to British nationals overseas
- the extent of the organization’s presence in the United Kingdom
- the need to support other members of the international community in the global fight against terrorism<sup>85</sup>

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<sup>83</sup> Section 3(4) of the 2000 Act.

<sup>84</sup> Section 3(5) of the 2000 Act.

<sup>85</sup> *Explanatory Memorandum to the Terrorism Act 2000 (Proscribed Organisations)* (Amendment Order) 2011.

In developing its system and rationale for creating a list of terrorist organizations, Lord Lloyd and Paul Wilkinson, in their *Inquiry into Legislation Against Terrorism*, presented three principal rationales for the role of the list in the United Kingdom: ease of proof in criminal trials, providing a basis for the criminalization of fundraising and other activities of terrorist groups, and as a clear symbol of public revolution and reassurance that severe measures are being taken.<sup>86</sup>

## **2. Review and Oversight**

While the Home Secretary develops the list, the adding or removing of organizations is subject to an affirmative approval of both Houses of Parliament.<sup>87</sup> A proscribed organization, or any person affected by the proscription of the organization, may apply to the Home Secretary for delisting and, if the Home Secretary refuses the application, the applicant may appeal to the Proscribed Organizations Appeals Commission (POAC).<sup>88</sup> It should be noted that the Home Secretary has never de-proscribed an organization. The only organization to be de-proscribed was the People's Mojahadeen Organization of Iran (PMOI, aka MEK), which was the result of an appeal it took to the POAC that was upheld by the Court of Appeal.<sup>89</sup>

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<sup>86</sup> Lord Lloyd of Berwick and Paul Wilkinson, *Inquiry into Legislation Against Terrorism* (London: Stationery Office, 1996), vol. 1, 29–30, vol. 2, 57.

<sup>87</sup> Section 3 of the 2000 Act.

<sup>88</sup> *Explanatory Memorandum to the Terrorism Act 2000*.

<sup>89</sup> Horne and Douse, *The Terrorism Act 2000: Proscribed Organizations*, 17.

## **B. AUSTRALIA**

*Nobody should underestimate how much the world changed on the 11th of September 2001.*

—John Howard,  
Prime Minister of Australia (1996 to 2007)

Since 2002, Australia has maintained a terrorist organizations list as required by the Security Legislation Amendment (Terrorism) Act of 2002. Currently, 18 terrorist organizations are on the list.<sup>90</sup>

### **1. The Listing Process**

In Australia, two procedures are employed to add an organization to the terrorist organization list, specifically: (1) a court can list an organization when presented with a prosecution of an individual for a terrorism offense (it may not independently consider listing an organization), and (2) the government may list an organization pursuant to its criminal code. The latter mechanism is the typical method. Under this process, the attorney general is authorized to designate organizations if satisfied on reasonable grounds that an organization does the following.

- is directly or indirectly engaged in preparing, planning, assisting, or fostering the commission of a terrorist act (whether or not the act has occurred or will occur)
- advocated the commission of a terrorist act (whether or not a terrorist act has occurred or will occur)

The Australian Security Intelligence Organization (ASIO) provides support to the Attorney general in this process, and provides the specific relevant information upon which a decision can be reached. Other agencies are also involved including the Department of Foreign Affairs and Trade, the Department of the Prime Minister and Cabinet, and the Australian Federal Police, who are consulted about the listing decisions.

In providing information, the ASIO will evaluate whether the organization directly or indirectly is doing the following.

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<sup>90</sup> Australian Government, Australian National Security, “Listed Terrorist Organisations,” 2014, <http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>.



- engaging in a terrorist act
- preparing to commit a terrorist act
- planning a terrorist act
- assisting in the commission of a terrorist act
- fostering the commission of a terrorist act
- advocating the commission of a terrorist act

Australia recognizes that many groups could be considered a terrorist organization and could be qualified to be added to the list. As a result, Australia developed a list of non-legislative factors that can be used to guide and prioritize the selection of organizations to the list. The key non-legislative factors are as follows.

- the organization's engagement in terrorism
- the organization's ideology
- links to other terrorist group
- links to australia
- threats to australian interests
- listing by the united nations or like-minded countries
- engagement in peace or mediation processes

Furthermore, not all characteristics carry equal weight on Australia's list. "Depending on available information, some factors may carry more weight than others in selecting organizations for consideration."<sup>91</sup> For example, information indicating links to Australia or threats to Australian interests may prioritize the listing of a particular group as a terrorist organization. However, a lack of information with respect to one or more factors will not preclude an organization from being considered for listing.

ASIO provides advice to the Attorney general in the form of the Statement of Reasons that outlines the organization's involvement in terrorism. The purpose of the Statement of Reasons is to outline how the organization meets the legislative factors for listing. The Statement of Reasons may also include information that relates to the non-legislative factors. The Statement of Reasons is intended to be based on unclassified

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<sup>91</sup> Australian Government, Attorney-General's Department, *Protocol, Listing Terrorist Organisations Under the Criminal Code*.

information about the organization that can be corroborated by classified information, which enables the Statement of Reasons to be made available to the public, and provides transparency as to the basis on which the Attorney general's decision is made. If insufficient unclassified information exists about an organization, the ASIO may provide a classified briefing to the Attorney general.

## **2. Review and Oversight**

Australian law requires that a terrorist organization be reviewed for listing every three years, to ensure that a regular review of the organizations on the list occurs, and that a determination is regularly made as to whether the organization continues to satisfy the criteria for listing. The "ASIO's Statement of Reasons for an organization being considered for re-listing will provide information . . . indicating the organization's involvement in the doing, preparing, planning, assisting, fostering, or advocating of terrorism since the time it was last listed."<sup>92</sup> An organization can apply to be delisted at any time.

After listing, the Parliamentary Joint Committee on Intelligence and Security (PJCIS) can review the listing and the supporting evidence for the listing. If the PJCIS determines that insufficient evidence exists to support the listing, the PJCIS can recommend that Parliament disallow the listing. According to materials issued by the Attorney general's office, this process "provides openness, transparency and accountability in the listing process."<sup>93</sup>

In addition, the judiciary has oversight powers when it comes to the listing process, and can review the Attorney general's decision to ensure it was made based on "logically probative evidence" and that it was a proper exercise of power "not flawed by irrelevant considerations, improper purpose or exercised in bad faith."<sup>94</sup>

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<sup>92</sup> Australian Government, Attorney-General's Department, *Protocol, Listing Terrorist Organisations Under the Criminal Code*.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

### 3. Public Information

Australia makes its terrorist organization list publicly available on the Internet, along with the factual basis that supports the designation.<sup>95</sup> The public, therefore, has easy access to information supporting the designation of terrorist groups.<sup>96</sup>

Specifically, the Australian information provided about each designated terrorist organization includes the following.

- the legal basis for designating the group as a terrorist organization
- the objectives of the group, its structure, and its leadership
- the nature of its membership and how the group recruits its members
- how the group receives its funding
- the acts of terrorism the group has been engaged in both directly and indirectly
- how the organization fosters terrorism
- the names of other terrorist groups it associates with
- whether other countries also list the group as a terrorist organization
- whether the group is engaged in peace negotiations
- how the group's terrorist activities impact Australia's national security interests

All this information is obtained from the Statement of Reasons which, as described above, is the non-classified document that outlines the basis of the designation provided to the Australian Attorney general who makes the terrorist designation decision.<sup>97</sup> According to Australian law, the Statement of Reasons contains the publicly available information about the terrorist group, which can then be corroborated by classified information.<sup>98</sup> The fact that publicly available information forms the foundation for the decision-making process, allows the Australian public to have access

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<sup>95</sup> Australian Government, Australian National Security, "Listed Terrorist Organisations."

<sup>96</sup> Ibid.

<sup>97</sup> Australian Government, Attorney-General's Department, *Protocol, Listing Terrorist Organisations Under the Criminal Code*.

<sup>98</sup> Ibid.

to many of the details about why a particular group has been designated by its government.

## **C. CANADA**

*The free and civilized nations of the world have joined hands to press the first great struggle for justice of the 21st century—the struggle to defy and defeat the forces of terrorism.*

—Jean Chretien,  
Prime Minister of Canada (1993–2003)

Since December 18, 2001, article 83.05 of the Canadian Criminal Code provides that the Governor in Council can maintain a list of the entities engaged in terrorism, facilitating it, or acting on behalf of such an entity. Currently, 46 organizations are on the Canadian list.<sup>99</sup>

### **1. The Listing Process**

The Governor in Council may place any organization on the terrorism list if, on the recommendation of the Minister of Public Safety and Emergency Preparedness, reasonable grounds exist to believe the following.

1. The organization has knowingly carried out, attempted to carry out, participated in or facilitated a terrorist act
2. The organization is knowingly acting on behalf of, at the direction of, or in association with an organization described in (1)

The listing process requires extensive analysis of security or criminal information and intelligence to ensure that the decision to list meets the legal threshold. Once at the threshold, if reasonable grounds exist to believe that the entity has knowingly participated in or facilitated a terrorist activity, or is knowingly acting on behalf of, at the direction of, or in association with such an entity, the organization is listed.<sup>100</sup>

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<sup>99</sup> Government of Canada, Public Safety Canada, “Currently Listed Entities,” 2013, <http://www.publicsafety.gc.ca/cnt/ntnl-scrtr/centr-trrrsm/lstd-ntts/crrnt-lstd-ntts-eng.aspx>.

<sup>100</sup> Government of Canada, Public Safety Canada, “The Government of Canada Lists the Haqqani Network and the Taliban as Terrorist Organization,” May 15, 2013, <http://www.publicsafety.gc.ca/cnt/nws/nws-rlss/2013/20130515-eng.aspx>.

While not a crime to be a member of a listed entity, under the Criminal Code, any person or group listed may have their assets seized and forfeited. Persons and organizations that deal in the property or finances of a listed entity may be subjected to severe penalties. In addition, it is a crime to knowingly participate in, or contribute to, any activity of a listed entity for the purpose of enhancing the ability of the entity to facilitate or execute a terrorist activity.<sup>101</sup> The Criminal Code “outlaws participation in terrorist group activities, the facilitation of terrorist activity, acting to benefit a terrorist group, or harboring terrorists. Many of these activities are specifically defined as illegal whether or not terrorist activity is actually carried out and whether or not the person involved with the organization is aware of any specific attacks being planned by the organization, thus enabling authorities to use the law in a preventive fashion in addition to punishment after the fact.”<sup>102</sup>

An organization can apply to the Minister to be removed from the list. In ruling on the application, the Minister must determine whether reasonable grounds exist to recommend to the Governor in Council that the group should be delisted. The Minister has 60 days to rule upon the application, and if no decision is made within that time, the organization remains listed (the decision is “deemed” to have been made).

## **2. Review and Oversight**

The organization can then apply for judicial review of the decision to remain on the list. When an application is made, the judge must examine the security and criminal intelligence reports considered in the listing and hear any evidence or information that may be presented on behalf of the Minister and the applicant. The judge then determines whether the listing decision was reasonable. If it is found to be unreasonable, the group is removed from the list. The judge may receive into evidence any information deemed reliable and appropriate, even if it is not otherwise admissible under Canadian law.

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<sup>101</sup> Government of Canada, Public Safety Canada, “The Government of Canada Lists the Haqqani Network and the Taliban as Terrorist Organization.”

<sup>102</sup> Nadav Morag, *Comparative Homeland Security, Global Lessons* (Hoboken, NJ: John Wiley & Sons, 2011), 73.

The list of organizations on the Canadian list is reviewed every two years to ensure that it is up-to-date, and to determine whether reasonable grounds still exist to keep an organization on the list.<sup>103</sup>

#### **D. THE INTERNATIONAL COMPARISON**

Overall, many similarities exist between the designation processes used by the United Kingdom, Canada, and Australia. First, and perhaps most obviously, the Executive Branch in each country makes the decision about which organizations will be designated as a terrorist organization. In some cases, it is the equivalent to the secretary of state, and in others, to the Attorney general. In either case, the Executive Branch exercises the authority—in some cases, with the oversight of the judicial branch, and in others, the legislative branch.

Further, while the U.S. model has been criticized, it appears that the designation process is routinely criticized in other countries as well. For example, Professor Clive Walker of the University of Leeds has argued that in the United Kingdom:

Proscription has been of marginal utility in combatting political violence, to which the survival of the IRA over most of a century bears ample testimony. Paramilitary organisations cannot be abolished by legislative fiat, and proscription actually increases the difficulties of infiltration and monitoring so as to achieve the criminalization of those members engaged in violence.<sup>104</sup>

Similarly, Kent Roach, Professor of Law at the University of Toronto, has argued that while judicial review of the Canadian designation process is available, “it is unlikely that such reviews would be successful or remove the stigma of being officially listed as a terrorist.”<sup>105</sup> Roach also criticizes the judicial procedures used to conduct reviews of the Executive’s designation decision. Roach argues:

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<sup>103</sup> Irwin Cotler, “Thinking Outside the Box: Foundational Principles for a Counterterrorism Law and Policy,” in *The Security of Freedom: Essays on Canada’s Anti-Terrorism Bill*, ed. Ronald J. Daniels, Patrick Macklem, and Kent Roach (Toronto: University of Toronto Press, 2002), 124.

<sup>104</sup> Clive Walker, *Blackstone’s Guide to the Anti-Terror Legislation* (Oxford, 2002), 64.

<sup>105</sup> Kent Roach, “Canada’s Response to Terrorism,” in *Global Anti-Terrorism Law and Policy*, ed. Victor V. Ramraj, Michael Hor, and Kent Roach (Cambridge: Cambridge University Press, 2005), 516–517.

Hearings can be closed and the group challenging the listing can be denied access to evidence before the judge because of national security concerns. In cases of intelligence received from other governments or international organizations, the applicant can be denied access to even a summary of the evidence. In a case decided after September 11 in a non-terrorist context, the Supreme Court of Canada emphasized the importance for Canada of assuring foreign governments that their intelligence will be kept secret because Canada relies heavily on such intelligence.<sup>106</sup>

Irwin Cotler of McGill University echoes Roach's view and notes that all the safeguards currently in place are "after the fact" safeguards (such as judicial review and provisions for removal). He argues that consideration should be given to provide prior notice to the organizations being designated, with an opportunity for a hearing to occur prior to the designation.<sup>107</sup>

In contrast to these remarks, Charles Clark, a former U.K. Home Secretary, commented that:

There are three principal reasons why we think proscription is important. First, it has been, and remains, a powerful deterrent to people to engage in terrorist activity. Secondly, related offences are a way of tackling some of the lower-level support for terrorist organisations . . . Third, proscription acts as a powerful signal of rejection by Government—and indeed by society as a whole—of organisations' claims to legitimacy.<sup>108</sup>

Similarly, Vic Toews, Canada's Minister of Public Safety, has supported the use of terrorist lists and recently commented that:

The safety and security of Canadians is a priority for our Government, and the listing of terrorist entities sends a strong message that terrorist activity will not be tolerated. We have taken a number of actions to equip law enforcement and the courts with more tools to combat terrorism, including the recently passed Combating Terrorism Act.<sup>109</sup>

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<sup>106</sup> Roach, "Canada's Response to Terrorism," 517.

<sup>107</sup> Cotler, "Thinking Outside the Box: Foundational Principles for a Counterterrorism Law and Policy," 124.

<sup>108</sup> Charles Clarke, UK Home Secretary, House of Commons, January 18, 2000.

<sup>109</sup> Government of Canada, Public Safety Canada, "The Government of Canada Lists the Haqqani Network and the Taliban as Terrorist Organization."

Consistent with the views of Toews and Clark, the process of designating organizations and attempting to minimize their effectiveness by outlawing support for them is now a widely accepted counterterrorism tool used by many countries and organizations, such as the EU and the United Nations.<sup>110</sup> While it is a widely adopted counterterrorism tool, the process used to designate terrorist organizations can be improved. It is, therefore, important to examine the underlying basis for the criticisms of the designation systems used.

For example, in Australia, proscription of terrorist organizations remains controversial because it raises questions about public law and the limits on executive power, while also challenging the accepted boundaries of the criminal justice system.<sup>111</sup> With respect to the specific process developed in Australia, critics have challenged “the dominant role played by the executive in the decision-making process.”<sup>112</sup> Included in the concerns expressed are that the decision making is arbitrary and politicized. Specifically, the Castan Centre for Human Rights Law noted:

The Minister is not bound by any rules of precedent nor is s/he required to follow any set criteria and as such is free to exercise the power to list terrorist organizations in a politically motivated, inconsistent, selective, and discriminatory fashion.<sup>113</sup>

Concern has also been expressed in Australia that the public may place an undue amount of pressure on the executive branch for protection from actual and perceived terrorist threats, resulting in the excessive listing of terrorist groups. “In the aftermath of a terrorist attack, such pressure may be based on a general climate of fear, especially about particular ethnic and religious groups within the community, rather than a rational assessment of the security threat.”<sup>114</sup> Some have observed that in Australia, no member

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<sup>110</sup> See e.g., Security Council Resolution 1267, UN SCOR, 54th Session, 4051st meeting (1999).

<sup>111</sup> Andrew Lynch, Nicola McGarrity, and George Williams, “The Proscription of Terrorist Organisations in Australia,” *Federal Law Review*, *Tobin Centre of Public Law, University of New South Wales* (2008): 3–4.

<sup>112</sup> *Ibid.*, 12.

<sup>113</sup> *Ibid.*, 13; Castan Centre for Human Rights Law, Monash University, Submission No. 2 to PJICIS, Parliament of Australia, *Inquiry into the Terrorist Organizations Listing Provisions of the Criminal Code Act 1995*, January 22, 2007, 6.

<sup>114</sup> Lynch, McGarrity, and Williams, “The Proscription of Terrorist Organisations in Australia,” 13.



of Parliament has spoken out strongly against proscription of a specific organization— notwithstanding the fact that the executive has often failed to put forward any evidence that the organization poses a direct or indirect threat to the security of the country.<sup>115</sup> This suspicion was exacerbated when the PKK (Kurdistan Workers Party) was listed in Australia when the Turkish prime minister visited the country in 2010<sup>6</sup>, causing the Australian Muslim Civil Rights Network to comment that:

We are concerned that the listing of an organization with seemingly no security threat to Australia illustrates a proscription regime that is primarily dictated by foreign policy considerations rather than the more appropriate ends of protecting Australian citizens from the threat of terrorism.<sup>116</sup>

While many might agree that the PKK is in fact a terrorist organization, the timing of the designation in Australia provided an opportunity for many to question the process.

As in the United States, the Australian process has been subjected to criticism because it is difficult to understand how certain organizations that have no direct link to the country are proscribed, and yet other organizations, such as Liberation Tigers of Tamil Eelam (LTTE), which has a link to Australia, are not proscribed. One analyst commented that of the organizations proscribed in Australia, 13 had no connection to the country, two involved organizations with no link other than being linked to Iraq where Australian personnel were located, and only four could be identified as presenting a threat to Australia's security.<sup>117</sup>

The criticisms leveled at the Australian system are interesting since that country is the most conservative in adding groups to its list, among the countries studied for this research. Currently, Australia only has 18 organizations designated and all of them have also been designed by United States, the United Kingdom, and Canada. Australia also has a robust system that provides the public with details as to each terrorist organization, the

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<sup>115</sup> Lynch, McGarrity, and Williams, "The Proscription of Terrorist Organisations in Australia," 13.

<sup>116</sup> Australian Muslim Civil Rights Advocacy Network, Submission No. 14 to PJCIS, Parliament of Australia, *Review of the Listing of the Kurdistan Workers' Party (PKK) as a Terrorist Organisation under the Criminal Code Act of 1995*, 2006, 1.

<sup>117</sup> Patrick Emerton, Submission 23 to PJCIS, Parliament of Australia, *Inquiry into the Terrorist Organisation Listing Provisions of the Criminal Code Act 1995*, 2007, 3.

basis for its listing as a terrorist organization, details of its terrorist activity, and its association with other terrorist groups.<sup>118</sup> In addition, Australia is one of the countries that publishes the nonstatutory factors that influence the designation. Despite using an approach that provides more transparency than many other countries, and despite having a very narrow list of terrorist groups, the same criticisms leveled against the U.S. system are used against the Australian system.

At the other end of the spectrum is the UK model, which appears to be the most liberal in designating terrorist groups. The United Kingdom has designated over 50 international terrorist organizations, and an additional 14 terrorist groups based in Northern Ireland. Fourteen of the organizations on the UK list are not designated by the United States, Australia or Canada. The designation process also appears to be among the easiest:

The process of proscription is a convenient one for the executive. Subject only to the assent of Parliament and to consideration of the five discretionary factors set out . . . the Secretary of State may proscribe an organization on the basis of nothing more than a belief that it is, in the broadest possible sense, concerned in terrorism. Neither before nor after the addition of an organization . . . is she required to satisfy a court that it is concerned in terrorism. The only legal constraint she faces is the possibility that a proscribed organization may subsequently seek to discharge the burden of persuading POAC that her decision was flawed on public law grounds.<sup>119</sup>

In addition to the ease of the process and the limited oversight, the UK model has been criticized because of the difficulty in being removed from the list. It has been noted that the Home Secretary has never delisted any organization and that only one organization, the PMOI, has successfully appealed to the POAC to be delisted.<sup>120</sup> In contrast, nine organizations have been delisted in the United States by the secretary of state, and none of those were court-mandated delistings. Although, it should be noted that in the United Kingdom, the criticisms presented about the listing process did result in the

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<sup>118</sup> Australian Government, Australian National Security, “Listed Terrorist Organisations.”

<sup>119</sup> Horne and Douse, *The Terrorism Act 2000: Proscribed Organizations*, 17.

<sup>120</sup> *Ibid.*

identification of the nonstatutory factors that influence the decision-making process. Nevertheless, of the models studied, the UK model appears to afford the Executive Branch the most power.

The designation models from allied nations offer insight into modifications the United States could adopt to identify publicly the nonstatutory factors that influence the designation process and to enhance disclosure of that information. While all designation models are criticized, the UK, Australian, and Canadian models suggest that more could be done within the U.S. system to clarify the factors being weighed in making FTO determinations. The research presented in the next two chapters suggests that information about the nonstatutory factors influential in U.S. FTO decisions is already contained within public documents, although not always easily accessible to the public. Therefore, modifications could be made to the U.S. model to make this information more easily available and accessible, without impacting U.S. national security interests.

## VI. THE FTO LIST

*In preparing for battle  
I have always found that plans are useless,  
but planning is indispensable.*

—Dwight D. Eisenhower,  
34th U.S. President

### A. BACKGROUND

The development of the FTO list represents “the shift from well-organized, localized groups supported by state sponsors to loosely organized, international networks of terrorists.”<sup>121</sup> The list reflects the fact that terrorist threats have shifted over the years, and it reflects the movement from state sponsorship of terrorism, where a country could be identified as the foundation or primary supporter of terrorism, to more independent groups that

rely less on direct state sponsorship and more on private financial and logistical support. Many terrorist groups secretly exploit the resources of international nongovernmental organizations (NGOs), companies, and wealthy individuals.<sup>122</sup>

Due to the proliferation of these independent terrorist groups throughout the world, the FTO list will likely become increasingly important to the United States. As a result, other lists, such as the State Sponsors of Terrorism list, may become less significant since they no longer reflect the primary sources of terrorist threats against the United States.

Since its inception in 1997, the State Department has been active in adding and deleting groups from the FTO list. The largest number of groups added to the list was at its inception, in 1997, when 30 organizations were designated to form the inaugural FTO list.<sup>123</sup> Additions and deletions to the list have occurred in each year since, with the exceptions of 2006 and 2007, during which time no organization was added to or

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<sup>121</sup> Pillar, *Terrorism and U.S. Foreign Policy*, 152–53.

<sup>122</sup> The National Commission on Terrorism, “Countering the Changing Threat,” June 7, 2000, <http://www.fas.org/irp/threat/commission.html>.

<sup>123</sup> See Appendix C for the full list of 30 FTOs designated in October 1997.

removed from the list. In recent years, significant activity has occurred. Sixteen terrorist organizations were added and three groups removed in the 2010–2014<sup>124</sup> time frame, which represents the highest level of activity on the list since the five-year period following 9/11 at which time, 16 groups were added to the list, and two groups were removed.<sup>125</sup>

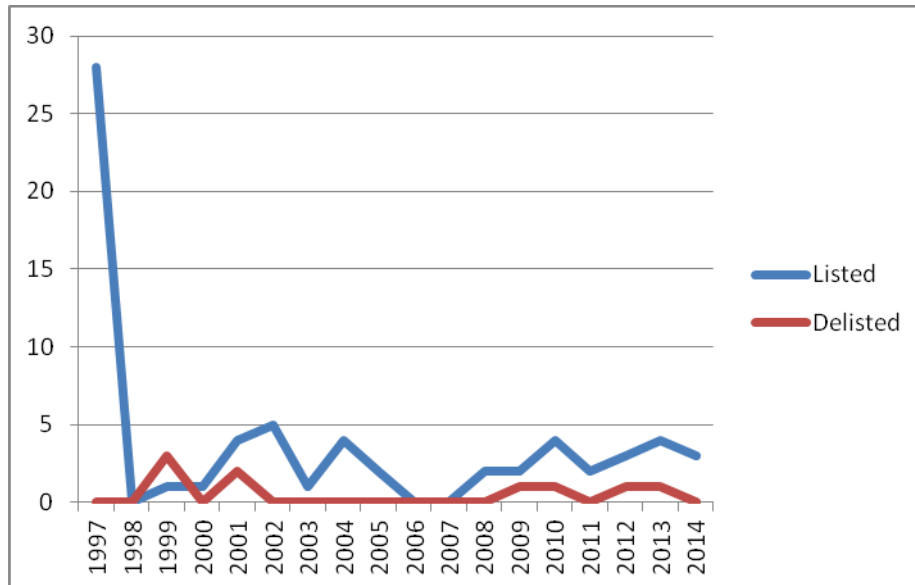


Figure 2. Graph Representing Timeline of FTO Listing and Delisting

## B. OVERVIEW OF FTOS ON THE LIST

In the annual country reports, the State Department provides, among other things, a summary of the activities engaged in by each designated FTO, which frequently includes a description of the most significant terrorist attack committed by the group, the location of the attack, and the number of lives lost. The descriptions occasionally include whether arrests were made that year, or whether other governmental actions have occurred to thwart or curtail the terrorist activities of a particular group.

<sup>124</sup> This calculation includes activity through January 2014, when this research was concluded.

<sup>125</sup> The two FTOs delisted were removed from the list in October 2001. It is, therefore, likely that the delisting process began significantly before 9/11.

The country reports' descriptions of the types of terrorist activities engaged in by the designated FTOs includes bombings, mortar attacks, assassinations, shootings, suicide bombings, kidnappings, rocket propelled grenade attacks, car bombs, and biological attacks. Some of the FTO activities described include what may be considered more traditional criminal acts, such as extortion, robberies,<sup>126</sup> drug trafficking,<sup>127</sup> murder, use of false identities,<sup>128</sup> cigarette smuggling,<sup>129</sup> and even bank robberies. However, the State Department frequently reports that these more traditional criminal activities are typically committed in an effort to fund the more serious terrorist activities.<sup>130</sup> In one case, a leader of an FTO claimed that 70% of its operations were financed through narcotics trafficking.<sup>131</sup>

The description of FTO activities frequently, but not always, indicates the group's activities against the United States. When the information is provided, it is frequently provided in one year's report but not repeated in the next year's country reports. As a result, it is necessary to review all the country reports to determine which groups have taken action against the United States. Even for those FTOs whose descriptions indicate the group attacked a U.S. citizen or a U.S. interest, the information is frequently provided in vague terms and reading all the country reports is necessary to determine which groups have attacked or otherwise directly challenged the United States.

Of the 66 FTOs designated between 1997 and January 2014, 33 of the groups murdered, participated in the murder of, or facilitated the murder of a U.S. citizen. An additional nine attacked or attempted to attack a U.S. interest, such as a U.S. embassy or a business owned by U.S. citizens. The descriptions provided for 17 FTOs contained in

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<sup>126</sup> See e.g., U.S. Department of State, *Country Reports on Terrorism, 1997–2012* (see descriptions for Al Qaeda in the Arabian Peninsula (AQAP), Basque Fatherland and Liberty (ETA), Continuity Irish Republican Army (CIRA), Real Irish Republican Army (RIRA), and Revolutionary Organization 17 November (17N)).

<sup>127</sup> See e.g., U.S. Department of State, *Country Reports on Terrorism, 1997–2012* (see descriptions for United Self Defense Forces of Colombia (AUC), Hizballah, and National Liberation Army (ELN)).

<sup>128</sup> Ibid. (see descriptions for Lashkar I Jhangvi).

<sup>129</sup> Ibid. (see descriptions for Real Irish Republican Army (RIRA)).

<sup>130</sup> Ibid. (see descriptions for Revolutionary Armed Forces of Colombia (FARC) and al Qaeda in Iraq (AQI)).

<sup>131</sup> U.S. Department of State, *Patterns of Global Terrorism 2002*, released April 2003, 124.

the State Department country reports<sup>132</sup> fail to state any information about whether the FTO has killed, injured, kidnapped a U.S. citizen or that it harmed or attempted to harm an entity connected or associated with the United States. Of those 17 groups, three have been delisted. However, for the remaining 14 groups, the descriptions offered through the country reports fail to explain the specific U.S. interest being challenged or attacked by the designated FTOs.

The 14 groups are based in Japan, Spain, Israel/Palestine, Turkey, Sri Lanka, Northern Ireland, Colombia, Libya, Bangladesh, Iran, and Indonesia. Some of these countries are allies; some are not. Some are members of North Atlantic Treaty Organization (NATO) whose interests the United States would likely be inclined to support, but most of these countries are not a member of NATO. The specific interest the United States has with respect to the actions of these groups, warranting each group's designation as an FTO, are not identified by the State Department in the country reports.

### **C. THE 9/11 DIVIDE**

While the FTO list can be analyzed as a whole, to include all the groups that have been designated since the inception of the FTO list, analyzing the FTO list based on whether the organizations were designated before or after 9/11 is a more appropriate delineation for analysis. Analyzing the list in this manner also demonstrates the dramatic changes that occurred in American counterterrorism policy as a result of those terrorist attacks.

As stated previously, 66 organizations have been designated since the inception of the FTO list. Thirty-two of these groups were designated prior to 9/11 and 34 were designated following that day. Nine groups have been removed since the inception of the list, which leaves 57 groups currently on the FTO list. Of the 57 groups currently designated, 24 were designated prior to 9/11 (representing 42% of the list) and 33 were designated after (representing 58% of the list). Thus, more than half of the groups that the

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<sup>132</sup> The FTOs designated in 2013 and 2014 were not yet described in a country report at the time this research was conducted. Therefore, information provided in the press release announcing the designation was relied upon for the seven groups designated in 2013 and in January 2014.

United States currently recognizes as terrorist groups were designated following the events of 9/11.

### **1. The FTOs Designated before 9/11**

Thirty-two terrorist groups were designated FTOs before September 11, 2001, and 24 of those groups remain on the FTO list today. The eight no longer on the FTO list were removed from the list by the secretary of state, and some of those removals occurred before and some after 9/11.<sup>133</sup> The FTOs designated prior to 9/11 are a mix of organizations from around the world reflecting groups challenging governments located in Israel, Colombia, Turkey, Greece, India, Sri Lanka, Spain, Japan, Egypt, England, and the Philippines.

While the FTO list was created after the Cold War was officially over, the groups designated to be on the list were heavily influenced by Cold War-era concerns. Of the 32 FTOs designated prior to 9/11, 15 groups (or 47% of the designated FTOs) were founded on communist principles. While the foundational principles of all 15 groups were based on Marxist/Maoist doctrine, the groups designated were from geographic regions all over the world. For example, the designated communist groups were based in Peru, Colombia, Spain, Turkey, Japan, Greece, Syria, Lebanon, and the Israeli-occupied territories, Chile, Iran, and Cambodia. Table 1 reflects the list of communist FTOs designated prior to 9/11, and a summary of each group's overall purpose.

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<sup>133</sup> It should be noted that al Jihad was not removed from the list, but merged into al Qaeda.



<b>Organization</b> <sup>134</sup>	<b>Description</b> <sup>135</sup>
Basque Fatherland and Liberty (ETA)	Founded in 1959 to establish an independent homeland based on Marxist principles in Spain's Basque region, among other areas.
Democratic Front for the Liberation of Palestine (DFLP)	Marxist-Leninist organization founded in 1969 when it split from the Popular Front for the Liberation of Palestine (PFLP). Believes Palestinian national goals can be achieved only through revolution of the masses.
Japanese Red Army (JRA)	An international terrorist group formed around 1970 after breaking away from Japanese Communist League-Red Army Faction.
Kurdistan Workers Party (PKK)	Established in 1974 as a Marxist-Leninist insurgent group primarily composed of Turkish Kurds.
Manuel Rodriguez Patriotic Front (FPMR)	Founded in 1983 as the armed wing of the Chilean Communist Party and was named for the hero of Chile's war of independence against Spain.
Mujahadin-e Khalq Organization (MEK)	Formed in the 1960s, follows a philosophy that mixes Marxism and Islam. Developed into largest and most active armed Iranian dissident group.
National Liberation Army (ELN)	Rural-based, anti-US, Maoist-Marxist-Leninist guerrilla group formed in 1963.
Popular Front for the Liberation of Palestine (PFLP)	Marxist-Leninist group founded in 1967 by George Habash as a member of the PLO.
Revolutionary Armed Forces of Colombia (FARC)	The largest, best-trained, and best-equipped guerrilla organization in Colombia. Established in 1966 as military wing of Colombian Communist Party.
Revolutionary Nuclei (RN)	Successor to the Revolutionary People's Struggle, is a self-described revolutionary, anti-capitalist, and anti-imperialist group, which has declared its opposition to "imperialist domination, exploitation, and oppression," and is classified as Communist/Socialist.
Revolutionary Organization 17 November (17N)	A radical leftist group established in 1975, the group is anti-Greek establishment, anti-U.S., anti-Turkey, anti-NATO, anti-EU. 17N has declared itself to be Marxist-Leninist.
Revolutionary People's Liberation Party/Front (DHKP/C)	Originally formed in 1978, it espouses a Marxist ideology and is virulently anti-United States and anti-NATO.
Shining Path (SL), aka Communist Party of Peru	Formed in the late 1960s, and based on militant Maoist doctrine.
The Party of Democratic Kampuchea (Khmer Rouge)	A Communist insurgency group seeking to destabilize the Cambodian Government.
Tupac Amaru Revolutionary Movement (MRTA)	Traditional Marxist-Leninist revolutionary movement formed in 1983, to rid Peru of imperialism and establish Marxist regime.

Table 1. Pre-9/11 FTOs Based on Communist Ideology

<sup>134</sup> The list includes all FTOs designated prior to 9/11, even if they were subsequently delisted.

<sup>135</sup> The information provided in the "description" is extrapolated from the State Department country reports from 1997–2001. In addition, information was obtained and confirmed through the National Consortium of the Study of Terrorism and Responses to Terrorism (START), "Terrorist Organizations Profiles, 2010, <http://www.start.umd.edu/tops/>.

As noted by Nadav Morag, author of *Comparative Homeland Security, Global Lessons*, the Cold War influence on the FTO list is not surprising, “Since much of the development of the concept of national security occurred in the context of the Cold War, it is not surprising that the discipline of national security was focused on the Soviet threat and ensuring that the United States was able to contain and deter Soviet ambitions and actions worldwide.”<sup>136</sup>

Eight of the pre-9/11 designated FTOs, or a quarter of all of the FTOs listed, focused on terrorist activities involving Israel, and most of these groups were focused on the destruction the State of Israel. Table 2 reflects the list of FTOs designated prior to 9/11 that aim their activities against Israel, and a brief description of each organization.

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<sup>136</sup> Morag, *Comparative Homeland Security, Global Lessons*, 5.

<b>Organization</b> <sup>137</sup>	<b>Description</b> <sup>138</sup>
Abu Nidal Organization (ANO)	Split from PLO in 1974. ANO advocates the elimination of Israel and seeks to derail Middle East peace process.
HAMAS	Formed in late 1987 as an outgrowth of the Palestinian branch of the Muslim Brotherhood. Uses both political and violent means to pursue the goal of establishing an Islamic Palestinian state in place of Israel.
Hizballah	Seeks creation of Iranian-style Islamic republic in Lebanon and removal of non-Islamic influences from the area. Strongly anti-West and anti-Israel.
Kahane Chai <sup>139</sup>	Stated goal is to restore the biblical state of Israel. Declared to be terrorist organization in March 1994 by the Israeli Cabinet.
Popular Front for the Liberation of Palestine (PFLP) <sup>140</sup>	Marxist-Leninist group founded in 1967 by a member of the PLO. Opposes negotiations with Israel. Since 1978, PFLP has carried out numerous attacks against Israeli.
Popular Front for the Liberation of Palestine-General Command (PFLP-GC)	Split from the PFLP in 1968, claiming it wanted to focus more on fighting and less on politics. Carried out numerous cross-border terrorist attacks into Israel, using unusual means, such as hot-air balloons and motorized hang gliders.
Palestine Islamic Jihad (PIJ)	Committed to the creation of an Islamic Palestinian state and the destruction of Israel through holy war.
Palestine Liberation Front (PLF)	Known for aerial attacks against Israel. Broke away from the PFLP-GC in mid-1970s. Later split into pro-PLO, pro-Syrian, and pro-Libyan factions.

Table 2. Pre-9/11 FTOs Targeting Israel

Six of the 32 FTOs designated prior to 9/11, or 18% of the groups designated, had a relationship with al Qaeda or could be considered an Islamic fundamentalist group. While the FTO list has been criticized for failing to designate al Qaeda as one of the original FTOs in 1997, the original 1997 list did include a number of al Qaeda related organizations. For example, the 1997 FTO list did include al Jihad that later merged into al Qaeda. The 1997 list also designated Gama'a al-Islamiyya (IG) and HaraKat ul-

<sup>137</sup> The list includes all FTOs designated prior to 9/11, even if they were subsequently delisted.

<sup>138</sup> The information provided in the "description" is extrapolated from the State Department Country reports from 1997–2001.

<sup>139</sup> In 1997, the State Department designated both Kahane Chai and Kach as terrorist organizations, and these were later merged on the FTO list as one organization. Therefore, these groups are counted as one FTO for purposes of this calculation.

<sup>140</sup> PFLP appears on both the list of FTOs based on Communist principles and those against the State of Israel.

Mujahideen (HUM). Both organizations signed Bin Laden’s fatwa in 1998 that called for attacks against U.S. civilians and western interests. While the omission of al Qaeda from the original list was significant in that the list failed to identify one of the largest threats against the United States, al Qaeda was later designated in 1999, the first time FTOs could statutorily be added after the issuance of the original FTO list. The designation occurred less than two years before 9/11. Table 3 reflects the list of al Qaeda-related FTOs designated prior to 9/11, and a summary of each group’s overall purpose.

<b>Organization</b> <sup>141</sup>	<b>Description</b> <sup>142</sup>
Abu Sayyaf Group (ASG)	Members have studied or worked in the Middle East and developed ties to mujahidin while fighting and training in Afghanistan.
al Qaeda (AQ) <sup>143</sup>	Established by Bin Laden in about 1990 for those who fought in Afghanistan against the Soviet invasion. Goal is to “reestablish the Muslim state.” Issued the 1998 “The World Islamic Front for Jihad Against The Jews and Crusaders,” saying it was the duty of all Muslims to kill U.S. citizens, civilian or military, and their allies everywhere.
Armed Islamic Group (GIA)	Islamic extremist group, some senior members of AQIM are former GIA insurgents.
Harakat ul-Mujahideen (HUM)	Islamic militant group based in Pakistan. Leader linked to Bin Laden and signed his 1998 fatwa calling for attacks on U.S. and western interests. Operates terrorist training camps in Afghanistan and suffered casualties in the U.S. missile strikes on Bin Laden-associated training camps.
Gama’a al-Islamiyya (IG)	Signed Bin Laden’s 1998 fatwa calling for attacks against U.S. civilians. Former leader of group appeared in video with Bin Laden and al-Zawahiri threatening retaliation against the U.S. for al-Rahman’s incarceration.
Islamic Movement of Uzbekistan (IMU)	Closely affiliated with al Qaida and embraced Bin Laden’s anti-US, anti-Western agenda.

Table 3. Pre-9/11 FTOs Related to al Qaeda

<sup>141</sup> The list includes all FTOs designated prior to 9/11, even if they were subsequently delisted.

<sup>142</sup> The information provided in the “description” is extrapolated from the State Department country reports from 1997–2001.

<sup>143</sup> Al Jihad merged into al Qaeda and was described in the country reports as an Egyptian Islamic extremist group active since the late 1970s. Appears to be divided into two factions: one led by Ayman al-Zawahiri—who currently is in Afghanistan and is a key leader in terrorist financier Usama Bin Laden’s new World Islamic Front—and the Vanguards of Conquest. Increasingly willing to target U.S. interests in Egypt.

Of the groups included in the original 1997 FTO list, few had any significant relationship to Iraq or Afghanistan. Some groups were engaged in fighting the Soviets in Afghanistan, and others had a presence in Iraq. For example, the 1998 country reports stated as to one group: “Some ASG members have studied or worked in the Middle East and developed ties to mujahidin while fighting and training in Afghanistan”<sup>144</sup> Nevertheless, from the information provided in the country reports, it does not appear that any of the FTO groups were designated prior to 9/11 based on their activities in either country.

Few FTO descriptions offered by the State Department in 1997 provided any reference to an action taken against or specific animosity towards the United States. However, of the 32 FTOs listed prior to 9/11, 17 of the groups (or 53% of the designated groups) had committed an act against a U.S. interest (such as a U.S. embassy or business interest), held a U.S. citizen hostage, or had killed a U.S. citizen.

Four FTOs, however, do not fit neatly into any of the broad categories listed above. These groups are Aum Shinrikyo (Aum), Liberation Tiger of Tamil Eelam (LTTE), Real IRA (RIRA), and United Self-Defense Forces of Colombia (AUC). These groups are based in Japan, Sri Lanka, Northern Ireland (UK), and Colombia, respectively. Each represents a significant and prolonged terrorist threat to a nation that is a U.S. ally. AUM is a cult established in 1987 by Shoko Asahara that seeks to overthrow the government of Japan. On March 20, 1995, AUM members simultaneously released sarin nerve gas on several Tokyo subway trains, which killed 12 persons and injured up to six thousand. LTTE created a battlefield insurgent terrorism strategy that targeted senior Sri Lankan political and military leaders, such that political assassinations and bombings became commonplace. RIRA formed in the late 1990s to remove British forces from Northern Ireland, unify Ireland, and disrupt the Northern Ireland peace process. AUC was designated on September 10, 2001, and its designation represents the last reflection of pre-9/11 U.S. counterterrorism strategy. AUC is an umbrella organization formed in April 1997 to consolidate Colombia’s local and regional paramilitary groups each with

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<sup>144</sup> U.S. Department of State, *Patterns of Global Terrorism, 1998–2000* (see description of Abu Sayyaf Group (ASG)).

the mission to protect economic interests and combat FARC and ELN insurgents locally. In the list of its terrorist activities, as reported in the 2002 country reports, the first country reports issued after the designation of AUC, the State Department stated:

AUC operations vary from assassinating suspected insurgent supporters to engaging guerrilla combat units . . . The AUC generally avoids engagements with government security forces and actions against U.S. personnel or interests.<sup>145</sup>

This statement represents the last time that the United States reported that a newly designated FTO avoided taking “actions against U.S. personnel or interests.”

The FTOs designated prior to 9/11, therefore, can be identified as falling into one of four broad categories. Namely, that the group: (1) was founded on communist principles, (2) was related to al Qaeda or Islamic fundamentalism, (3) sought the destruction of Israel, or (4) presented a prolonged terrorist threat to an allied nation.

Consistent with the fact that the FTO list did not adequately anticipate the al Qaeda threat, or the growth of terrorist groups in Iraq, Pakistan, and Afghanistan, many of the groups designated prior to 9/11 appear to have been designated for their historical acts of terrorism, rather than for their anticipated future threat to the United States. For example, the pre-9/11 Country Reports provided the following information about the FTOs.

- “The group earned a reputation for spectacular international attacks in the 1960s and 1970s.”<sup>146</sup>
- “. . . committed numerous international terrorist attacks in the 1970s. Since 1978 has conducted numerous attacks against Israeli or moderate Arab targets.”<sup>147</sup>
- “In the 1970s carried out numerous small bombings and minor assaults and some more spectacular operations in Israel and the occupied territories, concentrating on Israeli targets.”<sup>148</sup>

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<sup>145</sup> U.S. Department of State, *Patterns of Global Terrorism 2002*, 124.

<sup>146</sup> U.S. Department of State, *Reports on Terrorism 2006*, released April 2007, 267.

<sup>147</sup> U.S. Department of State, *Country Reports on Terrorism 2004*, released April 2005, 106.

<sup>148</sup> U.S. Department of State, *Patterns of Global Terrorism 1997*, released April 1998, 76 (Democratic Front for the Liberation of Palestine (DFLP)).

- Major attacks included the Rome and Vienna airports in December 1985, the Neve Shalom synagogue in Istanbul and the Pan Am Flight 73 hijacking in Karachi in September 1986, and the City of Poros day-excursion ship attack in July 1988 in Greece. . . . assassinated a Jordanian diplomat in Lebanon in January 1994 and has been linked to the killing of the PLO representative there. Has not attacked Western targets since the late 1980s.<sup>149</sup>
- The Khmer Rouge conducted a campaign of genocide in which more than 1 million persons were killed during its four years in power in the late 1970s . . . Virtually has disintegrated as a viable insurgent organization because of defections . . .<sup>150</sup>

Thus, the pre-9/11 FTO list represented a historical list of groups that committed terrorist attacks, some with a prior history of attacking U.S. citizens or allied nations, rather than a reflection of emerging threats the country was likely to face in the future.

While 32 groups were designated as FTOs prior to 9/11, three were delisted prior to 9/11. Therefore, on September 11, 2001, the FTO list consisted of 29 organizations. The list appears in Appendix B, and reflects the following.

- Eleven groups founded on communist principles (representing 38% of the FTOs).<sup>151</sup>
- Eight groups focused on Israel (representing 28% of the FTOs).
- Six groups associated with al Qaeda and/or radical Islam (representing 20% of the FTOs).
- Four groups challenging an allied nation (representing 14% of the FTOs).

Thus, prior to 9/11, the dominant terrorism focus of U.S. foreign terrorism policy was on communist insurgent groups that might undermine the government of an allied nation. The second most significant concern was the protection of the State of Israel. Next was the threat of al Qaeda and radical Islam. The fourth concern was the threat to the security of an allied nation.

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<sup>149</sup> U.S. Department of State, *Patterns of Global Terrorism 1997*, 72 (Abu Nidal Organization (ANO), Activities).

<sup>150</sup> Ibid., 90 (The Party of Democratic Kampuchea (Khmer Rouge), Descriptions).

<sup>151</sup> For purposes of this calculation, and to avoid double counting one group, PFLP is counted in the group of FTOs that are anti-Israeli even though the group is also founded on Communist principles.

## **2. The FTOs Designated following 9/11**

Thirty-four FTOs were designated following the 9/11 terrorist attacks, and only one of these groups have been removed from the list by the secretary of state.<sup>152</sup> The additions to the list post-9/11 represent a shift in focus of the American terrorism effort from the pre-9/11 designation focus. The geographic locations of the groups designated remain diverse, but the post-9/11 groups are bound by characteristics other than geography.

Unlike the pre-9/11 list, where a significant number of the designated groups were founded on communist principles, only two groups added to the FTO list following 9/11 are identified by the State Department as being based on communist principles, the Communist Party of the Philippines/New People's Army (CPP/NPA) and the Revolutionary Struggle (RS). Prior to 9/11, groups whose philosophy was based on Marxist doctrine represented 47% of the total groups designated. Following 9/11, such groups represented only 6% of the new groups designated.

Similarly, two groups were added that are focused on the destruction of the State of Israel: Al-Aqsa Martyrs Brigade (AAMB) and Army of Islam (AOI). While the total number of anti-Israeli FTOs was raised to 10, this number is deceptively low since a number of the designated FTOs are opposed to Israel, including the al Qaeda affiliated organizations. This number simply reflects the groups whose sole purpose is the destruction of Israel.

One group, the Continuity Irish Republican Army (CIRA), was designated that challenges an allied nation. Jundallah, a group based in Iran, was also designated.<sup>153</sup> Little information was provided about this designation and some speculate that it was

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<sup>152</sup> The 34 include the FTOs designated as of January 15, 2014, the date this research concluded. Any organizations designated following that date are not included in this analysis.

<sup>153</sup> U.S. Department of State, "Secretary of State's Terrorist Designation of Jundallah," November 3, 2010, <http://www.state.gov/r/pa/prs/ps/2010/11/150332.htm>.



designated to generate renewed diplomatic relations with Iran, a state sponsor of terrorism.<sup>154</sup>

The remaining 28 FTOs added to the list following 9/11, representing 82% of the groups designated post-9/11, are organizations affiliated with al Qaeda or are identified as a radical Islamic group. Prior to 9/11, only 18% of the total groups designated had such an affiliation, and on 9/11, 20% of the groups still designated on that day had an affiliation to al Qaeda. The increase following 9/11 to 82% demonstrates a significant, but not unexpected, shift in focus on the FTO list. Table 4 reflects the list of al Qaeda-related FTOs designated after 9/11, and a summary of each group's overall purpose.

<b>Organization</b> <sup>155</sup>	<b>Description</b> <sup>156</sup>
Jaish-e-Mohammed (JEM)	Pakistani Islamic extremist group, openly declared war against the United States.
Lashkar-e Tayyiba (LeT)	Formed in 1980s, militant wing of an Islamic extremist organization opposed the Soviet presence in Afghanistan, responsible for 2008 Mumbai attacks.
Asbat al-Ansar (AAA)	Lebanon-based, Sunni extremist group, associated with Bin Laden.
al-Qaida in the Islamic Maghreb (AQIM)	Formed in 1998, members left GIA leadership and tactics, seeks to overthrow Algerian government and install an Islamic regime. Merged with AQ.
Jemaah Islamiya (JI)	Southeast Asian terrorist network linked to AQ. Responsible for the Marriott Hotel bombing; Bali bombings, and attack on Australian Embassy in Jakarta.
Lashkar i Jhangvi (LJ)	Militant offshoot of a Sunni sectarian group, focusing on anti-Shia attacks. Has worked closely with the Taliban and TTP.
Ansar al-Islam (AAI)	Goals include expelling western interests from Iraq and establishing an Iraqi state based on Sharia law, conducted attacks coalition forces.
Libyan Islamic Fighting Group (LIFG)	Emerged in 1990s among Libyans who fought Soviets in Afghanistan and opposed Qadhafi. Aligned with Bin Laden and part of AQ leadership.
al-Qaida in Iraq (AQI)	Formed by al-Zarqawi in the 1990s to oppose U.S. and Western military forces in the Islamic world, and support for and the existence of Israel. Joined AQ and pledged allegiance to Bin Laden. Targeted

<sup>154</sup> Ali Gharib, "U.S. Labels Iranian Rebel Group 'Terrorist' Ahead of Talks, Lobe Log Foreign Policy," November 4, 2010, <http://www.lobelog.com/u-s-labels-iranian-rebel-group-terrorists-ahead-of-talks/>.

<sup>155</sup> The list includes all FTOs designated following 9/11, even if they were subsequently delisted.

<sup>156</sup> The information provided in the "description" is extrapolated from the State Department Country Reports from 2002–2012.

<b>Organization</b> <sup>155</sup>	<b>Description</b> <sup>156</sup>
	U.S. and coalition forces.
Islamic Jihad Union (IJU)	Sunni extremist organization based in Pakistan that splintered from the IMU in the early 2000s. IJU remains committed to overthrowing the government of Uzbekistan, but also has a global agenda to include attacks on coalition forces.
Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B)	Formed in 1992 to establish Islamic rule in Bangladesh. Connected to LeT. Leaders signed the 1998 Bin Laden fatwa that declared American civilians legitimate targets.
al-Shabaab (AS)	Militant wing of the former Somali Islamic Courts Council, pledged obedience to al-Zawahiri and AQ. Also developed ties to AQAP and AQIM.
Kata'ib Hizballah (KH)	Radical Shia Islamist group formed in 2006 with an anti-Western outlook and extremist ideology that has conducted attacks against Iraqi, U.S., and Coalition targets in Iraq. Links to Hizballah and receives support from Iran.
al-Qa'ida in the Arabian Peninsula (AQAP)	Result of a merger of al-Qa'ida in Yemen (AQY) and Saudi al-Qa'ida. Self-stated goals include establishing a caliphate in the Arabian Peninsula and the wider Middle East, as well as implementing Sharia law.
Harakat ul-Jihad-i-Islami (HUJI)	Founded in 1980 in Afghanistan to fight against the former Soviet Union. Seeks the annexation of Indian Kashmir and expulsion of coalition forces from Afghanistan. Has supplied fighters for the Taliban, and aligned with AQ.
Tehrik-e Taliban Pakistan (TTP)	Goals include waging a terrorist campaign against the Pakistani military and government, and NATO forces in Afghanistan. AQ relies on TTP for safe haven in the Pashtun areas along the Afghan-Pakistani border, giving TTP access to AQ's global terrorist network and its operational experience.
Indian Mujahedeen (IM)	Maintains close ties to other U.S.-designated terrorist entities including LeT, JEM, and HUJI. Objective is an Islamic Caliphate across South Asia.
Jemaah Anshorut Tauhid (JAT)	Formed in 2008, seeks an Islamic caliphate in Indonesia. Maintains close ties to JI and other indigenous terrorist groups in Southeast Asia.
Abdallah Azzam Brigades (AAB)	Claimed responsibility for a February 2009 rocket attack against Israel. Named after Ziad al Jarrah, a Lebanese citizen who was one of the masterminds of the 9/11 attacks on the United States. Leader linked to AQ.
Haqqani Network (HQN)	Formed in the late 1970s, around the time of the former Soviet Union's invasion of Afghanistan, established relationship with Bin Laden in the mid-1980s, and joined the Taliban in 1995.
Ansar al-Dine (AAD)	Operates in Mali, closely cooperates with AQIM.
Boko Haram	Nigeria-based militant group with links to AQIM, responsible for thousands of deaths, conducted attacks against a United Nations building, that killed 21 people and injured dozens more, many of them aid workers.
Ansaru	A Boko Haram splinter group. Focuses on Nigerian military and

<b>Organization</b> <sup>155</sup>	<b>Description</b> <sup>156</sup>
	Western targets. Raided a police station killing Nigerian police officers, attacked security services, kidnappings of foreigners living or working in Nigeria.
al-Mulathamun Battalion	Part of AQIM, claimed responsibility for the 2013 attack against a gas facility in Algeria. The four-day siege resulted in the death of at least 38 civilians, including three U.S. citizens. Seven other Americans escaped.
Ansar al-Shari'a in Benghazi <sup>157</sup>	Created after the fall of the Qadhafi regime, group involved in terrorist attacks, assassinations and attempted assassinations of Libyan officials, and the attacks against the U.S. Special Mission and Annex in Benghazi, Libya.
Ansar al-Shari'a in Darnah <sup>158</sup>	Created after the fall of the Qadhafi regime, group involved in terrorist attacks, assassinations and attempted assassinations of Libyan officials, and the attacks against the U.S. Special Mission and Annex in Benghazi, Libya.
Ansar al-Shari'a in Tunisia	Involved in the September 14, 2012 attack against the U.S. embassy and American school in Tunis, which put the lives of over 100 U.S. employees in the embassy at risk. Aligned with AQ and AQIM.
Moroccan Islamic Combatant Group (GICM)	Seeks to establish an Islamic state in Morocco, supports AQ. Emerged in the 1990s and is composed of Moroccan recruits who trained in armed camps in Afghanistan, including some who fought in the Soviet Afghan war.

Table 4. Post-9/11 FTOs Related to al Qaeda

Unlike the pre-9/11 list, where few groups had a significant relationship to Iraq or Afghanistan, 11 out of the 34 groups added to the FTO list following 9/11 designated, or approximately 32% of the additions to the list, were directly engaged in the wars in Iraq and Afghanistan. As reflected in Table 5, many of these groups targeted coalition forces, and were designated because of their activities directed against military personnel.

<sup>157</sup> In including this group as an al Qaeda-related FTO, it is recognized that this issue is in dispute. For the reasons stated in Chapter IX, the group is included in the chart.

<sup>158</sup> Ibid.

<b>Organization</b> <sup>159</sup>	<b>Description</b> <sup>160</sup>
al Qaeda in Iraq (AQI)	Established in Iraq soon after commencement of war to bring together jihadists and insurgents fighting against U.S. and coalition forces.
Ansar al-Islam	One of the leading groups engaged in anti-coalition attacks in Iraq; goals include expelling the U.S.-led coalition from Iraq.
Asbat al-Ansar (AAA)	Fighting coalition forces in Iraq since at least 2005 and several members of the group have been killed in anti-coalition operations.
Haqqani Network	Planned and executed a number of significant attacks against U.S. and coalition forces in Afghanistan.
Harakat-ul Jihad Islami (HUJI)	Seeks the annexation of Indian Kashmir and expulsion of coalition forces from Afghanistan.
Islamic Jihad Union (IJU)	Primarily operated against coalition forces in Afghanistan, and claimed responsibility for attacks targeting coalition forces.
Jaish-e-Mohammed (JEM)	Group's aim is to annex Indian Kashmir and expel coalition forces in Afghanistan, and has openly declared war against the United States.
Kata'ib Hizballah (KH)	Attacks U.S. and coalition forces, designed to undermine the establishment of a democratic, viable Iraqi state.
Lashkar e-Tayyiba (LT/LET)	Conducted a number of operations against coalition forces in Afghanistan.
Moroccan Islamic Combatant Group (GICM)	Implicated in the recruitment network of individuals for Iraq, and executed suicide attacks against coalition forces in Iraq.
Tehrik-e Taliban Pakistan (TTP)	Goals include usurping the government of Pakistan through a terror campaign against its leader, its military, and against NATO forces in Afghanistan.

Table 5. Post-9/11 FTOs Attacking Coalition Forces

Significantly, of the 34 groups added to the FTO list following 9/11, 29 of the groups (or approximately 85% of the designated groups) committed an act against an U.S. interest (such as a U.S. embassy or business interest), held a U.S. citizen hostage, or had killed an U.S. citizen. This percentage is up from 53% prior to 9/11. While the increase in this percentage is likely due to the wars in Iraq and Afghanistan, and the increased numbers of terrorist organizations that developed in those countries who attacked U.S. military personnel, it also reflects a change in the focus of the FTO list and the priorities set for the designation process.

<sup>159</sup> The list includes all FTOs designated following 9/11, even if they were subsequently delisted.

<sup>160</sup> The information provided in the "description" is extrapolated from the State Department Country Reports from 2002–2012.

Following 9/11, 34 groups were designated as FTOs and six were delisted. The designations following 9/11 consisted of the following.

- Twenty-eight groups associated with al Qaeda and/or radical Islam (representing 82% of the post-9/11 FTOs).
- Two groups founded on communist principles (representing 6% of the post-9/11 FTOs).
- Two groups focused on undermining Israel (representing 6% of the post-9/11 FTOs).
- One group challenging an allied nation (representing 3% of the post-9/11 FTOs).
- One group apparently designated for diplomatic reasons (representing 3% of the post 9/11 FTOs).

Thus, following 9/11, the overwhelmingly dominant counterterrorism focus of the United States is the threat of al Qaeda and radical Islam. While other areas hold some concern for the country, those areas are minor in comparison to the dominant concern presented by al Qaeda.

#### **D. THE FTOS DESIGNATED IN 2013 AND 2014**

Four terrorist groups were added to the FTO list in 2013, and three additional groups were added in January 2014. Due to their recent designation, these groups have not yet been included in a State Department country reports, and therefore, the more formal descriptions of these organizations are not yet available.<sup>161</sup> Nevertheless, an overview of these groups and the basis for their recent designations is helpful to understanding the factors used in designating organizations to the FTO list.

##### **1. 2013 FTOs**

Four terrorist groups were added to the FTO list in 2013: Ansar al- Dine (AAD), Boko Haram, Ansaru, and al-Mulathamun Battalion. In March 2013, the secretary of state designated AAD as an FTO. AAD operates in Mali and, according to the State Department's designation announcement, "cooperates closely with al-Qa'ida in the

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<sup>161</sup> The 2013 Country Reports is expected to be published in mid-2014.

Islamic Maghreb (AQIM).”<sup>162</sup> The designation announcement stated that AAD received support from AQIM in its battles against Malian and French forces, and that in the process, 82 Malian soldiers were executed and 30 additional were kidnapped.<sup>163</sup> The State Department announcement does not articulate the specific U.S. interest at risk by this Malian group, other than its affiliation with al Qaeda.

Similarly, on December 18, 2013, the secretary of state designated al-Mulathamun Battalion, which was originally part of AQIM but became a separate group when its leader, Mokhtar Belmokhtar, split from AQIM in late 2012. In the designation announcement, the secretary of state specifically cited the January 2013 attack against a gas facility in Algeria during which time 38 civilians, including three U.S. citizens, were killed.<sup>164</sup> The designation announcement also noted that the group had recently merged with the Movement for Unity and Jihad in West Africa (MUJAO), collectively named themselves “al-Murabitoun,” and committed twin suicide bombings in Niger. The Secretary added, “The newly formed al-Murabitoun extremist group constitutes the greatest near-term threat to U.S. and Western interests in the Sahel.”<sup>165</sup>

In July 2013, the U.S. Attorney for the Southern District of New York announced the filing of criminal charges against Mokhtar Belmokhtar for, among other things, his alleged participation in the January 2013 terrorist attack in Algeria that killed three Americans. Specifically, Belmokhtar was charged in an eight-count criminal complaint for providing material support to al Qaeda and al Qaeda in the Islamic Maghreb (AQIM), hostage-taking conspiracy, kidnapping of internationally protected persons, and conspiring to use a weapon of mass destruction. While the charges were filed five months prior to the FTO designation, the State Department did not mention the existence of criminal charges in its al-Mulathamun Battalion designation announcement.

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<sup>162</sup> U.S. State Department, “Terrorist Designations of Ansar al-Dine,” March 21, 2013, <http://www.state.gov/r/pa/prs/ps/2013/03/206493.htm>.

<sup>163</sup> Ibid.

<sup>164</sup> U.S. State Department, “Terrorist Designation of the al-Mulathamun Battalion,” December 18, 2013, <http://www.state.gov/r/pa/prs/ps/2013/218880.htm>.

<sup>165</sup> Ibid.

In November 2013, the secretary of state designated Boko Haram and its splinter group, Ansaru, as FTOs. Both of these groups operate primarily in Nigeria, and have links to AQIM. According to the State Department's designation announcement, these groups are responsible for "thousands of deaths in northeast and central Nigeria over the last several years including targeted killings of civilians"<sup>166</sup> and for killing and kidnapping international construction workers.<sup>167</sup>

The Boko Haram designation is interesting because the United States publicly debated the merits of an FTO designation for over a year. In 2012, Boko Haram was considered for an FTO designation, but the State Department declined to designate the group despite public efforts undertaken by members of Congress,<sup>168</sup> the Department of Justice,<sup>169</sup> and independent organizations.<sup>170</sup> Instead, three of its leaders were designated SDGTs:<sup>171</sup> Abubakar Shekau, Abubakar Adam Kambar, and Khalid Al-Barnawi. Shekau is considered the "most visible" leader, while the other two have ties to Boko Haram and Al Qaida in the Islamic Maghreb (an FTO).<sup>172</sup> According to the Heritage Foundation, the State Department provided little insight as to why Boko Haram was not designated an FTO in 2012, but some Nigeria "watchers" argued that Boko Haram was unique from other international terrorist groups and that a designation would discourage political solutions to address the political and economic grievances that underlie Boko Haram's campaign against the Nigerian state.<sup>173</sup>

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<sup>166</sup> U.S. State Department, "Terrorist Designations of Boko Haram and Ansaru," November 13, 2013, <http://www.state.gov/r/pa/prs/ps/2013/11/217509.htm>.

<sup>167</sup> Ibid.

<sup>168</sup> H.R. 5822/S.3249 (The Boko Haram Terrorist Designation Act, requiring the State Department to determine whether the organization meets the legal criteria for an FTO designation).

<sup>169</sup> Shiffman, "US to Slap 'Terrorist' Label on Nigerian Militants."

<sup>170</sup> The Heritage Foundation, *Boko Haram: Obama Fails to Designate Nigerian Sect A Terrorist Organization*; Roach, "The U.S. State Department Should Designate Boko Haram a Foreign Terrorist Organization."

<sup>171</sup> The Heritage Foundation, *Boko Haram: Obama Fails to Designate Nigerian Sect A Terrorist Organization*.

<sup>172</sup> U.S. State Department, "Designation of Haqqani Network Commander," May 11, 2011, <http://www.state.gov/r/pa/prs/ps/2011/05/163021.htm>.

<sup>173</sup> The Heritage Foundation, *Boko Haram: Obama Fails to Designate Nigerian Sect a Terrorist Organization*; A. Carl LeVan et al., "Letter to Secretary of State Hillary Clinton," May 21, 2012, <http://carllevan.com/wo-content/uploads/2012/05/Boko-Haram-FTO-letter-to-Clinton-5-21-2012.pdf>.

Media reports offered support for that conclusion, and referenced numerous experts on Nigerian politics warning that branding Boko Haram an FTO would empower the group on an international level and enhance its profile with Al-Qaida.<sup>174</sup> Defense minister Bello Halliru Mohammed said the effort to designate Boko Haram as an FTO would also affect dialogue between the group and the Nigerian government.<sup>175</sup>

We are looking at a dialogue to establish the grievances of the Boko Haram. The attempt to declare them an international terrorist organization will not be helpful. Boko Haram is not operating in America and America is not operating in Nigeria. They are not involved in our internal security operations, so I don't think it would be much significance really in that respect. But, we don't support it.<sup>176</sup>

The United States was not alone in declining to designate Boko Haram as a terrorist group. At the end of 2012, Boko Haram was not on the terrorist list of the United Kingdom, Canada, the EU, or Australia.

Boko Haram's ability to escape a 2012 designation was not the end of the story. First, its terrorist activities continued and began to generate national and international prominence.

- In 18-month period from January 2011 to June 2012, it is estimated that Boko Haram militants killed more than 1,000 people, including an August 2011 attack on the United Nations Building in Abuja that killed at least 23 people, a December 25, 2011 attack on a church that killed at least 35 people, and a January 2012 attack that killed more than 180 people.<sup>177</sup>
- On June 21, 2012, the group claimed responsibility for killing at least 21 people in two separate attacks on churches.<sup>178</sup>

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<sup>174</sup> Gianluca Mezzofiore, "Is America Ready to Label Boko Haram a Terrorist Organization?", *International Business Times News*, June 21, 2012, <http://www.npr.org/player/v2/mediaPlayer.html?action=1&t=1&islist=false&id=201017942&m=201017931>.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> U.S. Department of State, "Terrorist Designations of Boko Haram Commander," June 21, 2012, <http://www.state.gov/r/pa/prs/ps/2012/06/193574.htm>.

<sup>178</sup> Mezzofiore, "Is America Ready to Label Boko Haram a Terrorist Organization?"



- The U.S. House of Representatives connected Boko Haram to the September 2013 Westgate Mall attack in Nairobi, Kenya.<sup>179</sup>

On March 12, 2013, the Office of the Director of National Intelligence issued its Worldwide Threat Assessment of the U.S. Intelligence Community to the Senate Select Committee on Intelligence. In this document, James Clapper, Director of National Intelligence, made mention of Boko Haram several times in the 2013 Worldwide Threat Assessment. For example:

- In describing “The Global Jihadist threat Overseas: Affiliates, Allies and Sympathizers,” Clapper listed AQ, AS, Lashkar-e-Tayibba, and Boko Haram. Boko Haram was the only non-FTO group specifically named.<sup>180</sup>
- Under the category of “Mass Atrocities” Boko Haram was specifically named for conducting attacks on churches in Nigeria, and it was noted that the group exploits conditions in the country to attack civilians.<sup>181</sup>
- Later in the document, when addressing issues in Nigeria, Clapper stated that Boko Haram is a “northern Sunni extremist group with ties to AQIM—whose attacks on Christians and fellow Muslims in Nigeria have heightened religious and ethnic tensions and raised concerns of possible attacks against U.S. interests in the country.”<sup>182</sup>

At the same time, broader outreach efforts began on the merits of an FTO designation. For example, former U.S. Ambassador to Nigeria (2004–07), John Campbell, began public discussions on Boko Haram, and why the United States should care about it. In short, he stated the United States should care about this group because: (1) Nigeria has 175 million people, which makes it the most populous African country, (2) the group seeks to overthrow the government of Nigeria, (3) the current Nigerian government cooperates greatly with the United States, and (4) Boko Haram is a very

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<sup>179</sup> U.S. House of Representatives, Committee on Homeland Security, “Boko Haram, Growing Threat to the U.S. Homeland,” September 13, 2013, <http://homeland.house.gov/sites/homeland.house.gov/files/documents/09-13-13-Boko-Haram-Report.pdf>; Emma Anya and Dayo Oketola, “B. Haram Linked to Group Behind Keya Mall Attack, Punch,” September 27, 2013, <http://www.punchng.com/news/bharam-linked-to-group-behind-kenya-mall-attack/>.

<sup>180</sup> James R. Clapper, *Statement for the Record, Worldwide Threat Assessment of the U.S. Intelligence Community*, Senate Select Committee on Intelligence, March 12, 2013, 5–6.

<sup>181</sup> *Ibid.*, 13.

<sup>182</sup> *Ibid.*, 21.

diffuse group, which is hard to identify and could develop strong international Jihadist links—making it a larger threat than many perceived.<sup>183</sup>

In July 2013, U.K.'s Home Secretary said, "Increasingly, the threat to Britain comes not just from al-Qaeda's core leadership itself, but from these so-called al-Qaeda's affiliates in places like Yemen and North Africa . . . and from associated groups like al-Shabab in Somalia and Boko Haram in northern Nigeria."<sup>184</sup> Shortly thereafter, the UK Home Secretary began its designation process by formally requesting that Boko Haram be banned under UK's terrorism laws.<sup>185</sup>

Later in the year, on September 13, 2013, the House of Representatives issued a report titled "Boko Haram: Growing Threat to the U.S. Homeland," which pointed to a growing relationship between Boko Haram and AQIM. Among the recommendations provided in this report was that the secretary of state designate Boko Haram as an FTO. The report denounced the slow FTO designation process and the failure to designate Boko Haram as an FTO, and found:

The U.S. Intelligence Community risks repeating the mistakes made with Tehrik-e-Taliban Pakistan (TTP) and al Qaeda in the Arabian Peninsula (AQAP) in failing to recognize the threat these groups posed until after each attempted to attack the U.S. Homeland. Boko Haram and its splinter group Ansaru have proven themselves as increasingly sophisticated and equally ruthless killers. Boko Haram, Ansaru, and al Qaeda are unified by an ideology that justifies horrific violence and views the United States as an enemy and a target.<sup>186</sup>

While a concerted effort was undertaken to address those concerned with a Boko Haram designation, none of this background was provided in the State Department designation announcement. Nevertheless, the Boko Haram FTO designation was unique

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<sup>183</sup> Mezzofiore, "Is America Ready to Label Boko Haram a Terrorist Organization?"

<sup>184</sup> BBC News, "Minbar Ansar Deen and Boko Haram Face UK Membership Ban," July 8, 2013, <http://www.bbc.co.uk/news/uk-23228908>.

<sup>185</sup> Ibid.

<sup>186</sup> U.S. House of Representatives, Committee on Homeland Security, "Boko Haram, Growing Threat to the U.S. Homeland, United States House of Representatives, Committee on Homeland Security," September 13, 2013, 6, <http://homeland.house.gov/boko-haram-growing-threat-us-homeland>; U.S. House of Representatives, Committee on Homeland Security, "Boko Haram, Growing Threat to the U.S. Homeland," pdf report.

due to the considerable public nature of the debate, and could foreshadow an increased effort by the State Department and members of the intelligence community to garner public support for its more controversial FTO designations.

## **2. 2014 FTOs**

On January 10, 2014, three additional FTOs were designated, namely, Ansar al-Shari'a in Benghazi, Ansar al-Shari'a in Darnah, and Ansar al-Shari'a in Tunisia. In explaining these new FTO designations, the State Department press release provided:

Created separately after the fall of the Qadhafi regime, Ansar al-Shari'a in Benghazi and Ansar al-Shari'a in Darnah have been involved in terrorist attacks against civilian targets, frequent assassinations, and attempted assassinations of security officials and political actors in eastern Libya, and the September 11, 2012 attacks against the U.S. Special Mission and Annex in Benghazi, Libya. Members of both organizations continue to pose a threat to U.S. interests in Libya . . .

. . . Ansar al-Shari'a in Tunisia was involved in the September 14, 2012 attack against the U.S. Embassy and American school in Tunis, which put the lives of over one hundred United States employees in the Embassy at risk. The Tunisian government has declared Ansar al-Shari'a in Tunisia a terrorist organization, and the group has been implicated in attacks against Tunisian security forces, assassinations of Tunisian political figures, and attempted suicide bombings of locations that tourists frequent. Ansar al-Shari'a in Tunisia, which is ideologically aligned with al-Qa'ida and tied to its affiliates, including AQIM, represents the greatest threat to U.S. interests in Tunisia.<sup>187</sup>

Thus, the latest U.S. designations of FTOs in 2013 and 2014 follow what seems to be the pattern that has developed following 9/11. The designations reflect the U.S. priority of designating groups that have attacked U.S. interests, including embassies, those that have killed U.S. citizens, and those affiliated with al Qaeda.

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<sup>187</sup> U.S. Department of State, "Terrorist Designations of Three Ansar al Shari'a Organizations and Leaders," January 10, 2014, <http://www.state.gov/r/pa/prs/ps/2014/01/219519.htm>.

## **E. THE INACTIVE FTOS**

### **1. Delisted Groups**

Nine groups have been removed or “delisted” from the FTO list since its inception in 1997: Moroccan Islamic Combatant Group (GICM), Tupac Amaru Revolutionary Movement (MRTA), Armed Islamic Group (GIA), Japanese Red Army (JRA), Democratic Front for the Liberation of Palestine (DFLP), Khmer Rouge, Manuel Rodriguez Patriotic Front (FPMR), Mujahadin-e Khalq (MEK), and Revolutionary Nuclei (RN). The groups are based in a diverse group of countries: Morocco, Peru, Algeria, Japan, Palestine, Cambodia, Chile, Iran, and Greece. Of the nine groups, eight of the groups were among the original FTOs designated in 1997. One only group, GICM, was designated after the inaugural 1997 group. It is also the only group designated after 9/11 to be removed from the list.

Seven of the nine groups removed from the list were founded on communist principles. The two remaining groups delisted (GICM and GIA) were founded on Islamic extremist principles. Many of the delisted groups, according to the country reports, were dormant for many years. Many were dormant even at the time originally designated in 1997.

Three of the nine delisted groups, the Democratic Front for the Liberation of Palestine (DFLP), the Part of Democratic Kampuchea (Khmer Rouge), and Manuel Rodriguez Patriotic Front (FRMR), were delisted in 1999. This delisting occurred at the first opportunity to remove groups from the list, and only two years after being branded a terrorist organization by the United States. Each of the three groups appears to have been originally designated due to its historical terrorist actions, as opposed to its then-current engagement in terrorist activities. For example, according to the country reports, at the time of the designation in 1997:

- The DFLP was only engaged in border raids, and the most recent terrorist act committed was listed as being from the 1970s
- The Khmer Rouge, while previously a ruthless organization, had “virtually disintegrated”

- The FPMR effectiveness as a terrorist organization had been successfully undercut by successful government counterterrorism strategies

While all three groups were removed from the list in 1999, it is unclear why these dormant groups were originally designated since it appears that they had in fact been dormant for many years prior to the designation. The State Department reports on these groups do not add any clarity on the reasons for the 1997 designations.

In 2001, two additional groups were removed from the list, Peru's Tupac Amaru Revolutionary Movement (MRTA) and Japan's Japanese Red Army (JRA). According to the State Department's report, the MRTA had suffered from defections and had its effectiveness as a terrorist group thwarted by successful government strategies. In the years leading up to the delisting, the State Department noted that the MRTA had not committed a terrorist act since 1997, and that most of its leaders had been killed or imprisoned. With respect to JRA, the State Department reports do not explain the specific reasons behind the delisting of the JRA. Nevertheless, in the years preceding the delisting, the State Department frequently referred to the number of years since a last JRA attack and the fact that many of the group's leaders had been killed or imprisoned.

Following the delisting of the five groups listed above, nearly eight years passed before another FTO was removed from the list. While the research has not uncovered an official explanation for eight-year lapse between delisting of FTOs, presumably it was caused by the 9/11 attacks and a distaste for removing groups that might pose a real or perceived threat.

In 2009, delisting activities began again when Revolutionary Nuclei (RN) was removed from the list. In the last country reports issued before the group was delisted, the State Department noted that the group was dormant, in that it had not committed a terrorist act in nine years (since 2000). Algeria's Armed Islamic Group (GIA) was removed from the list in 2010. Like many of the groups delisted before it, many of GIA's supporters had been killed or captured. Others had joined different terrorist organizations, such as AQIM. In addition, the State Department noted that the Algerian government had begun a reconciliation program in 1995. At the time of its delisting in 2010, the last

reported GIA terrorist act identified by the State Department occurred in 2001, nearly nine years before delisting.

The State Department's descriptions of GIA in the years prior to its delisting are insightful in that for many years, the State Department essentially stated that the group was dormant. For example, beginning in 2004, the State Department noted in its annual reports that the Algerian government had determined that GIA's leaders had joined other groups, or had been killed or captured. In 2007, three years before it was delisted, the State Department report indicated that Algeria claimed that the GIA network was "almost entirely broken up." Despite that declaration from Algeria, the very country dealing directly with the group's terrorist acts, GIA remained on the FTO list until it was delisted in 2010.

The above delisted seven groups generally consist of groups that appear to have been designated primarily based on historical reasons. Most were not active during the time in which they were branded terrorist by the United States. However, the above delisted seven groups provide insight into the significant factors that are evaluated for delisting: inactivity over a period of years, groups whose doctrine was based on communism, groups who were placed on the FTO list based on their historical acts of terrorism rather than current acts, the death or imprisonment of the group's leaders, agreement by the country afflicted, or successful programs created by the county afflicted aimed at reconciling with the group.

The two additional delisted groups, the MEK and GICM, were active during a period of their designation, but over the course of time, became less active. Both of these groups present additional insight into the delisting process.

The MEK, an Iran-based terrorist organization, could be the subject of a completely separate research effort, due to the years of litigation and lobbying efforts the group engaged in to be removed from the FTO list. For purposes of this analysis, however, a brief overview of the delisting the issues involving the MEK issues is relevant. The MEK was one of the original organizations designated to the FTO list.<sup>188</sup>

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<sup>188</sup> U.S. Department of State, *Country Reports on Terrorism 2011*, 248.

Throughout the nearly 15 years it was a designated FTO, the MEK challenged its designation in U.S. courts.<sup>189</sup> The MEK never won any of its legal actions.<sup>190</sup> Nevertheless, throughout its FTO designation period, the MEK developed support for its delisting efforts.<sup>191</sup> Furthermore, the MEK became very successful in its lobbying efforts to be delisted,<sup>192</sup> and was successful in gaining sympathy for the group rather than condemnation for its terrorist history.<sup>193</sup> Ultimately, the State Department was under a court order to determine whether the MEK should remain on the FTO list.<sup>194</sup> The secretary of state responded by delisting the group.<sup>195</sup>

In 2013, GICM was delisted, representing the first group delisted that was designated to the FTO list after 9/11. The delisting is unusual because according to the State Department, the group had alliances with al Qaeda and had been engaged in what could be considered “modern” terrorist acts, including involvement in the 2004 Madrid bombing, recruitment of individuals who would go to Iraq, and a suicide bombing against coalition forces in Iraq. Specifically, the State Department reports stated:

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<sup>189</sup> See e.g., U.S. Department of State, Office of the Coordinator for Counterterrorism, “1999 Report,” October 8, 1999, <http://public.gettysburg.edu/~dborock/courses/Spring/int-sec/terror/10-8-99%20Foreign%20Terrorist%20Organizations.htm>; *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010); *People’s Mojahedin Organization of Iran v. United States Dep’t of State*, 182 F.3d 17, 20 (D.C. Cir. 1999); *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001); *National Council of Resistance of Iran v. Department of States*, 373 F.3d 152 (D.C. Cir. 2004).

<sup>190</sup> See e.g., *People’s Mojahedin Organization of Iran v. United States Department of States*, 182 F.3d 17 (D.C. Cir. 1999); *National Council of Resistance of Iran v. Department of State*, 251 F.3d 192 (D.C. Cir. 2001); *National Council of Resistance of Iran v. Department of States*, 373 F.3d 152 (D.C. Cir. 2004); *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010).

<sup>191</sup> Interview with Daniel Fried, Special Advisor to the Secretary on Camp Ashraf, U.S. Department of State, “Coordinator for Counterterrorism Ambassador Daniel Benjamin and Special Advisor to the Secretary on Camp Ashraf Ambassador Daniel Fried on the Mujahedin-e Khalq (MEK) Designation and the Current Situation at Camp Ashraf,” Special Briefing, July 6, 2012, <http://www.state.gov/r/pa/prs/ps/2012/07/194656.htm>; McGreal, “Iranian Exiles, DC Lobbyists and the Campaign to Delist the MEK”; Scott Shane, “For Obscure Iranian Exile Group, Broad Support in U.S.,” *The New York Times*, November 26, 2011, [http://www.nytimes.com/2011/11/27/us/politics/lobbying-support-for-iranian-exile-group-crosses-party-lines.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/11/27/us/politics/lobbying-support-for-iranian-exile-group-crosses-party-lines.html?pagewanted=all&_r=0).

<sup>192</sup> *Ibid.*

<sup>193</sup> *Ibid.*

<sup>194</sup> *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010).

<sup>195</sup> U.S. Department of State, “Delisting of the Mujahedin-e Khalq,” September 28, 2012, <http://www.state.gov/r/pa/prs/ps/2012/09/198443.htm>.

GICM members were believed to be among those responsible for the 2004 Madrid train bombings, which killed 191 people. GICM members were also implicated in the recruitment network for Iraq, and at least one GICM member carried out a suicide attack against Coalition Forces in Iraq. According to open source reports, GICM individuals are believed to have participated in the 2003 Casablanca attacks.

For several years preceding the 2013 delisting, the State Department indicated in the reports that “the group has largely been inactive since these attacks, and has not claimed responsibility for or had attacks attributed to them since the Madrid train bombings in 2004.” The State Department also stated that, “Much of GICM’s leadership in Morocco and Europe has been killed, imprisoned, or is awaiting trial.”

Thus, a significant factor considered in the delisting process is whether the group no longer commits terrorist acts. It appears that the number of years that have passed since the FTO’s last terrorist act is a factor that influences whether an FTO will be removed from the list. For example, DFLP was removed 11 years after its last terrorist act, JRA was removed 13 years after its last terrorist act, GICM was removed nine years after its last terrorist act, the MEK was removed 11 years after its last terrorist act, and MRTA was removed five years after its last act.

## **2. Dormant Groups on the Current FTO List**

A number of groups, however, remain on the FTO list despite the fact that they have not committed a terrorist act for many years. For example, according to the State Department country reports, the last terrorist act committed by Aum Shinrikyo was in 1995, Gama’a al-Islamiyya was in 1997, Harakat ul-Jihad-i-Islami/Bangladesh was in 2005, Kahane Chai in 2005, LTTE in 2009, Libyan Islamic Fighting Group in the 1990s, Abu Nidal Organization’s in the late 1980s, and United Self-Defense Forces of Colombia was 2002. In many cases, it is unclear why the group remains on the list.

In fact, some independent groups, such as the RAND Corporation, have concluded that a number of groups on the current FTO list no longer exist. In its study called *How Terrorist Groups End*, RAND coded hundreds of terrorist organizations to



determine when the organization began to use terrorism and, where applicable, when the group stopped. As defined by the study:

The end year of a terrorist group was assigned based on the earliest evidence that the group no longer used terrorism to achieve its goals. This may be because security forces captured or killed most of its members, the group reached a peace agreement with the government, its members shifted to non-violent means to achieve their goals, or its members splintered to join other groups or start new ones. Regardless of the reason, the group did not commit further terrorist attacks under its name.<sup>196</sup>

Following the standards developed under this study, RAND concluded that the Abu Nidal Organization, Aum Shinrikyo, the Palestine Liberation Front, the Revolutionary Organization 17 November, and United Self-Defense Forces of Colombia have all ended.<sup>197</sup> Each of these groups, however, remains on the U.S. FTO list.

The State Department itself recognizes the dormant nature of some of the FTOs. Of the 50 FTOs on the list described in the 2012 country reports,<sup>198</sup> 28 committed terrorist acts in 2012, the year of the reporting period. The remainder had not committed a terrorist act that year. Thirteen of the FTOs described in the 2012 country reports had not committed a terrorist act in many years, nine of the groups last committed a terrorist act in or before 2005, and four of the groups had committed their last terrorist act in or before 2000. In fact, in many instances, the State Department specifically reported that a group was inactive. For example, the following statements were included in the State Department 2012 annual report.

- Abu Nidal Organization: “There were no known ANO attacks in 2012.”<sup>199</sup>
- Basque Fatherland and Liberty (“ETA”): “In 2012, a number of ETA fugitives were arrested.”<sup>200</sup>

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<sup>196</sup> Jones and Libicki, *How Terrorist Groups End, Lessons for Countering al Qaeda*, 5.

<sup>197</sup> *Ibid.*, 143, 150, 172, 177, 184.

<sup>198</sup> As noted previously, as of January 2014, seven additional FTOs have been designated since the publication of the 2012 country reports.

<sup>199</sup> U.S. Department of State, *Country Reports on Terrorism 2012*, released May 2013, 246.

<sup>200</sup> *Ibid.*, 252.

- Gama'a Al-Islamiyya: "In 1999, part of the group publicly renounced violence."<sup>201</sup>
- Harakat Ul-Jihad-I-Islami/Bangladesh: "HUJI-B committed no known attacks in 2012."<sup>202</sup>
- United Self-Defense Forces of Colombia (AUC): "The AUC did not carry out any terrorist attacks in 2012."<sup>203</sup>

These statements lead to the impression, whether true or not, that the FTO designations for these groups are outdated. This impression may be exacerbated by the fact that the organizations on the U.S. list are not reviewed frequently and remain on the list until affirmatively removed by the secretary of state.<sup>204</sup> While these FTOs may be under consideration for delisting, the annual report, without additional context, lends to a perception that these designations are dated.

In fact, logical reasons may exist as to why groups that appear dormant have not been removed from the list and the government may seek to make significant public policy statements by the non-removal of these groups. For example, with respect to the Palestine Liberation Front, its Abu Abbas fraction was responsible for the 1985 attack on the cruise ship Achille Lauro and the murder of U.S. citizen Leon Klinghoffer. This event was subject to considerable media attention and public outrage, since Mr. Klinghoffer was confined to his wheel chair at the time of his murder and was seen as particularly defenseless.<sup>205</sup>

Furthermore, in reviewing the State Department reports on the nine FTOs that have been delisted, none of the delisted groups has a record, as presented by the State Department, of killing Americans. As noted previously, harming Americans is a factor in the listing process. It therefore makes sense if it is a factor and perhaps even an impediment to delisting an organization. However, the State Department's silence on

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<sup>201</sup> U.S. Department of State, *Country Reports on Terrorism 2012*, 254.

<sup>202</sup> *Ibid.*, 258.

<sup>203</sup> *Ibid.*, 291.

<sup>204</sup> U.S. Department of State, "Foreign Terrorist Organizations."

<sup>205</sup> Corky Siemaszko, "Daughters Keep Up Terror Fight for Leon Klinghoffer 25 Years After Attack on Achille Lauro," *Daily News*, October 8, 2010, <http://www.nydailynews.com/new-york/daughters-terror-fight-leon-klinghoffer-25-years-attack-achille-lauro-article-1.188774>.

these issues leads to speculation about why certain groups that appear dormant remain on the list, and feeds speculation that the listing and delisting process is arbitrary.

This chapter focused on how the FTO list has gained in prominence as the terrorist threat shifted from countries that supported terrorism to the proliferation of independent terrorist groups around the world. The U.S. approach to the FTO list has similarly evolved over time, and this evolution is most dramatically seen when analyzing the U.S. approach before and after 9/11, and the shifting views toward communist-based groups, dormant groups, and al Qaeda-supported groups. To understand the importance of the FTO list to U.S. counterterrorism strategy more fully, it will be important to evaluate a more detailed analysis of the groups on the list and the factors that influenced their designation.

## VII. FACTORS INFLUENCING FTO DESIGNATIONS

*National honor is the national property of the highest value.*

—James Monroe,  
5th U.S. President

The previous chapter analyzed the organizations that have been named to the FTO list from a qualitative and quantitative approach, in an effort to identify nonstatutory factors that influence the FTO designation process. This chapter continues this analysis, but focuses on the FTO information provided in the annual State Department country reports, in an effort to identify the factors that influence the FTO designations. The last country report issued prior to the publication of this research was in July 2013, which included FTOs designated through 2012. Thus, the seven FTOs designated in 2013 and in January 2014 are not included in this chapter's analysis.

### A. ALLIED NATIONS

The FTO list contains organizations whose missions are aimed at undermining the governments of allied nations. There is, however, a limited number of allied nations that the United States supports through the naming of terrorist organizations to the FTO list. In each instance, there appears to be specific motivations for the designations.

#### 1. Support for Israel

As stated earlier, eight of the pre-9/11 designated FTOs,<sup>206</sup> or a quarter of all of the FTOs listed at the time, focused on terrorist activities involving Israel, and most of these groups are focused on the destruction of the State of Israel. Following 9/11, two additional FTOs were added that had as its core mission the destruction of Israel. The fact only two such groups have been designated after 9/11, however, does not equate to wavering U.S. support for Israel. To the contrary, a detailed analysis of the country reports finds that the U.S. concern for Israel appears to have increased over time. First, many of the designated al Qaeda affiliated groups are opposed to the State of Israel. If the

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<sup>206</sup> The groups are ANO, Hamas, Hizballah, Kahne Chai, PFLP, PFLP-GC, PIJ, and PLF.

al Qaeda groups were added to the groups whose primary mission is to oppose Israel, it would equate to at least 43<sup>207</sup> of the 57 (or approximately 75%) current FTOs being opposed to Israel. Further, a quantitative analysis of the country reports reflects increased discussion of Israel, Palestine, and Gaza over time. In fact, as illustrated in Figure 3, since the inception of the FTO list, the references to Israel have more than doubled in the section of the country reports that provides the descriptions of each FTO.

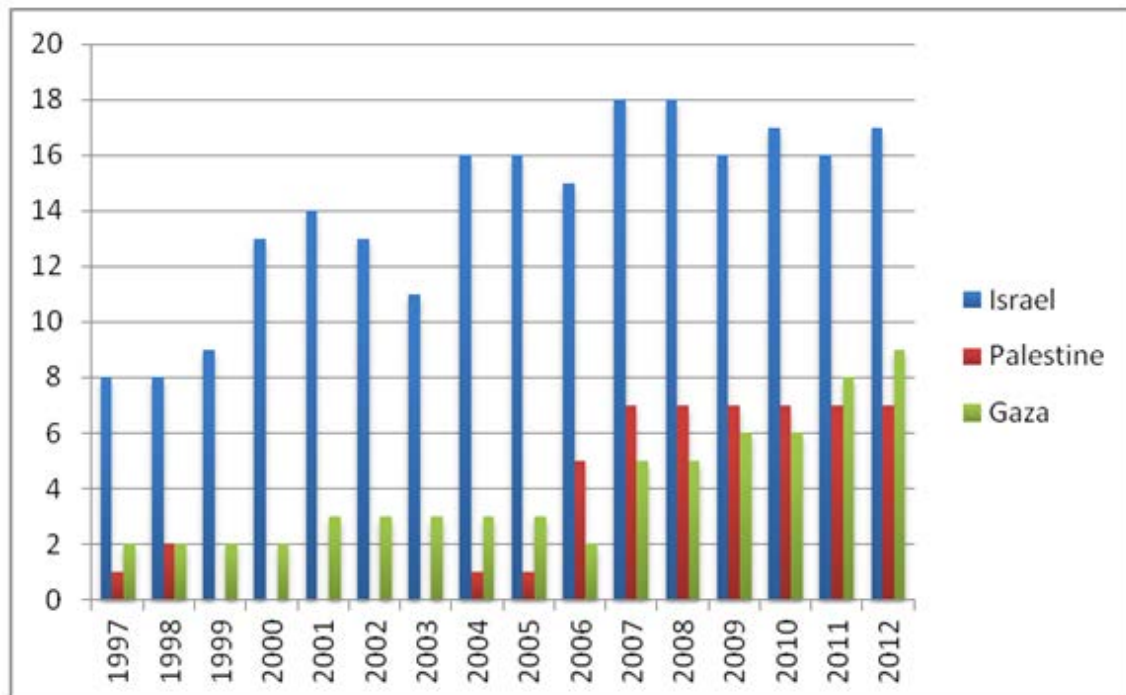


Figure 3. Graph of FTO Descriptions References to Israel, Palestine, Gaza.

Furthermore, as illustrated in Figure 4, references to Israel in the section of the country reports that provides the descriptions of the terrorist acts more than quadrupled since the inception of the FTO list in 1997.

<sup>207</sup> This number was determined as follows: the eight pre-9/11 and two post 9/11 anti-Israel groups, added to the six pre-9/11 and 28 post-9/11 al Qaeda groups, minus one delisted group.

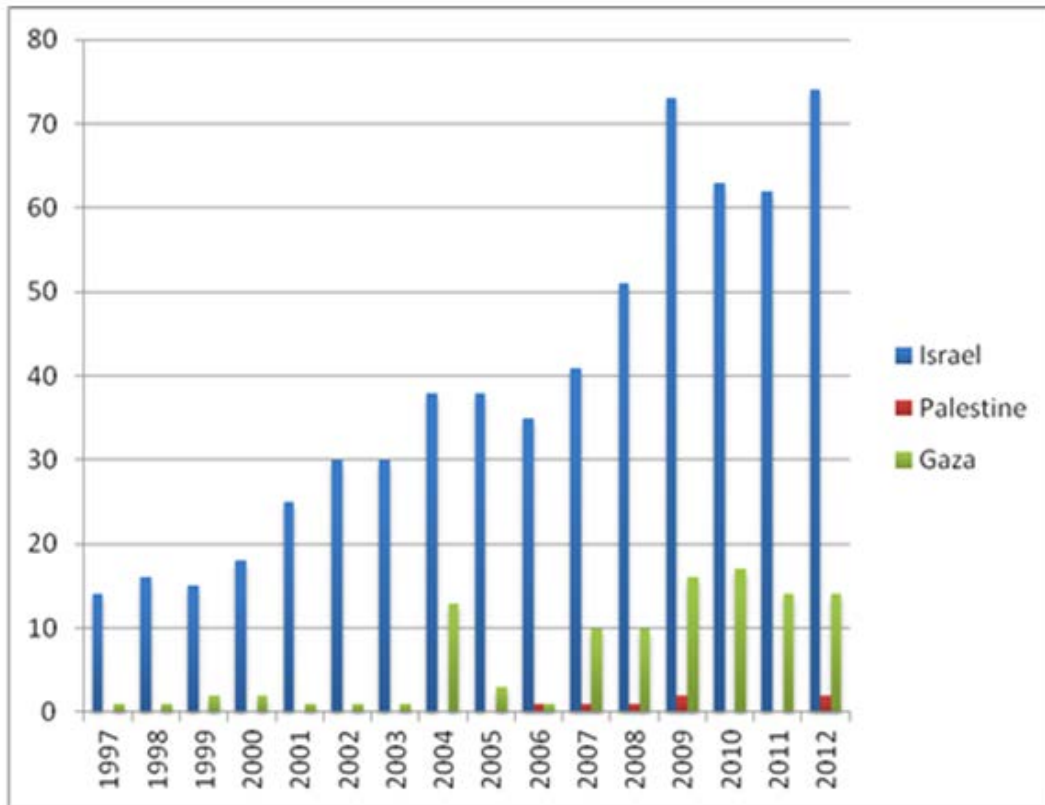


Figure 4. Graph of FTO Terrorist Activity References to Israel, Palestine, Gaza.

Based on this analysis, the U.S. support for the State of Israel is unwavering in the counterterrorism arena. Any organization that has as its core mission the destruction of Israel or support for groups that seek to undermine its security, will likely be designated an FTO.

## 2. Allied Nations Representing Strategic Challenges

Turkey, Greece, and the Philippines receive special attention on the FTO list and in the country reports. Each country is discussed numerous times each year, and has consistently been the subject of concern since 1997. See Figures 5 and 6.

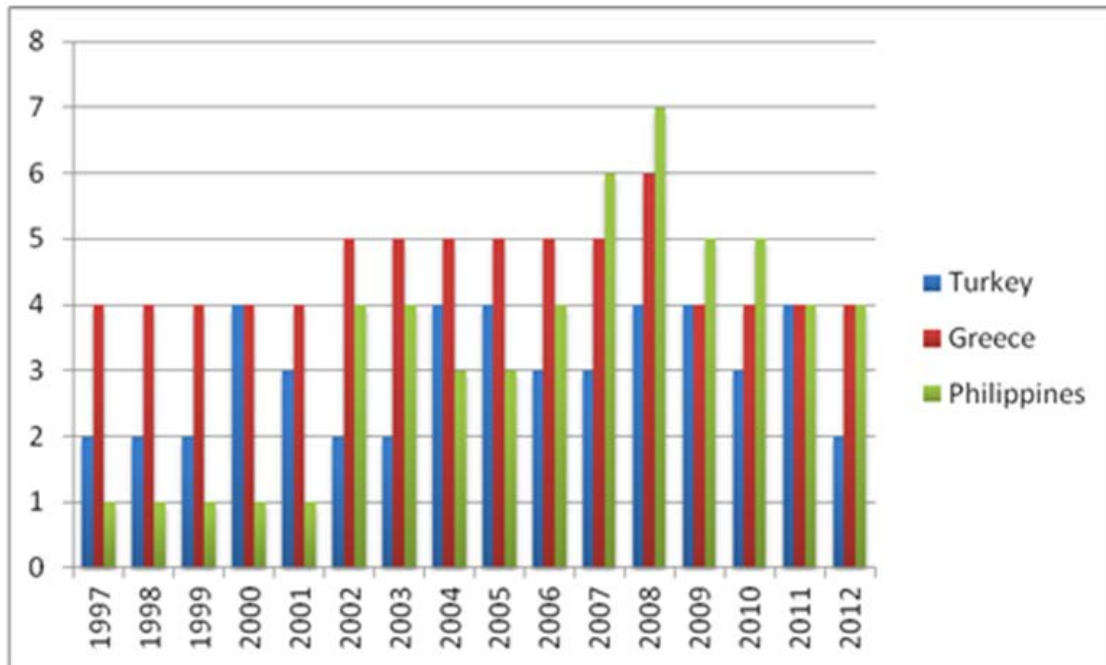


Figure 5. Graph Representing References to Turkey, Greece and the Philippines in the Descriptions of FTOs.

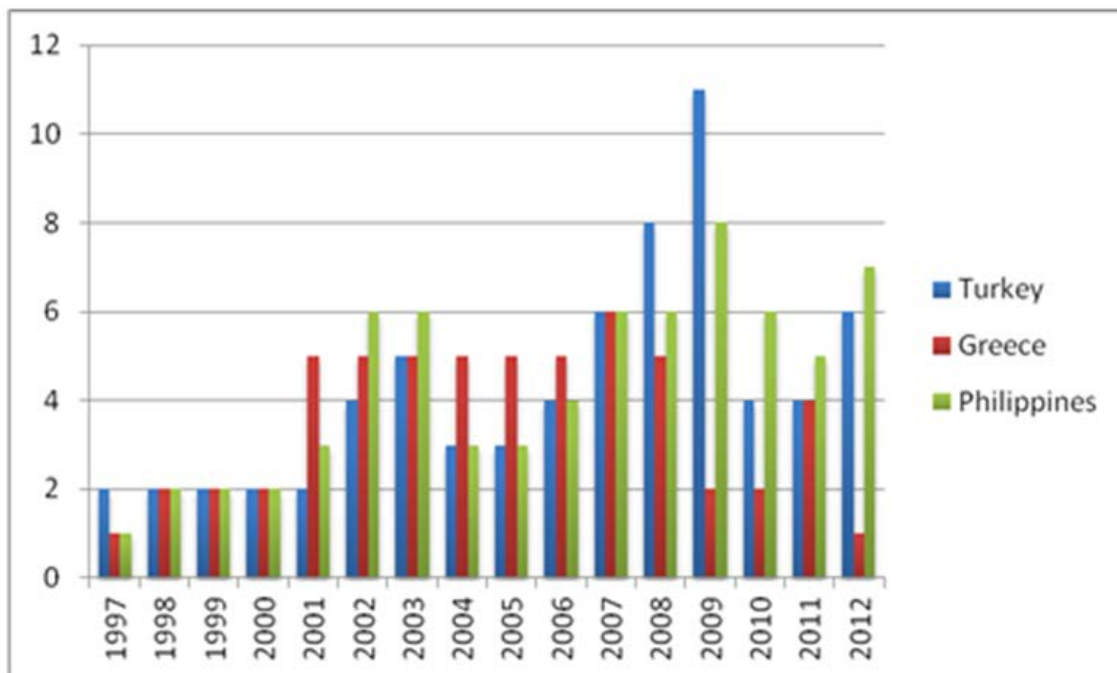


Figure 6. Graph Representing References to Turkey, Greece and the Philippines in the Terrorist Activities of FTOs.

The FTO list has consistently paid special attention to terrorism within the Philippines. “The Philippines is not a very large country but it has played a significant role in the spread of terrorism even beyond the boundaries of Asia. The country’s location, history and geopolitics offered an ideal breeding ground for terrorism to spread.”<sup>208</sup> Furthermore, al Qaeda and Jemaah Islamiah (JI) have been identified as training in the Philippines, as well as having connections to a number of actual and attempted terrorist acts linked to planning and training in the Philippines.<sup>209</sup>

The 9/11 Commission Report articulated the al Qaeda connection to the Philippines:

Bin Laden also provides equipment and training assistance to the Moro Islamic Liberation Front in the Philippines and also to a newly forming Philippine group that called itself the Abu Sayyaf Brigade. . . Al Qaeda helped Jemaah Islamiya (JI), a nascent organization headed by Indonesian Islamists with cells . . . [in the] Philippines.<sup>210</sup>

Furthermore, the particular terrorist groups designated as FTOs have a direct connection to U.S. interests. For example, Abu Sayyaf Group (ASG) emerged in 1995 as a threat to the United States. The RAND Corporation summarized the nature of the threat this group presents in a report when it stated that ASG was involved in:

Bojinka, a multipronged plot aimed at assassinating the Pope and President Clinton, bombing Washington’s embassies in Manila and Bangkok, and sabotaging U.S. commercial airliners flying trans-Pacific routes from U.S. West Coast cities. The plan was hatched by Ramzi Yousef, the convicted mastermind of the 1993 attack on the World Trade Center in New York, and was foiled only when volatile explosive compounds ignited a fire in the apartment that he was renting in Manila.<sup>211</sup>

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<sup>208</sup> H. Harry L. Roque, Jr., “The Philippines: the Weakest Link in the Fight Against Terrorism?” in *Global Anti-Terrorism Law and Policy*, ed. Victor V. Ramraj, Michael Hor, and Kent Roach (Cambridge: Cambridge University Press, 2005), 307.

<sup>209</sup> Ibid.

<sup>210</sup> *The 9/11 Commission Report* (New York: W.W. Norton & Company, 2004), 58.

<sup>211</sup> RAND National Defense Research Institute, “The Evolving Terrorist Threat to Southeast Asia, A Net Assessment,” 2009, [http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND\\_MG846.pdf](http://www.rand.org/content/dam/rand/pubs/monographs/2009/RAND_MG846.pdf).



The strategic importance of the Philippines to U.S. security interests and to the concern about the spread of al Qaeda is the basis for its focus in the FTO list. As summarized in one RAND report:

The persistence of insurgent and terrorist networks in the Philippines is fundamentally the result of the general inability of the Philippine state to extend effective governance to the region, a very weak (and, in some instances, non-existent) law enforcement and judicial system . . . These interrelated conditions have . . . contributed to chronic gaps on ruling authority have been filled by these terrorist groups.<sup>212</sup>

Similarly, Greece is a focus of the FTO list not as a statement of support for an allied nation, but due to overall concern that the country has not been a forceful opponent to the spread of terrorism. As stated by the National Commission on Terrorism:

Greece has been disturbingly passive in response to terrorist activities. It is identified by the U.S. Government as ‘one of the weakest links in Europe’s effort against terrorism’.<sup>213</sup> Since 1975 there have been 146 terrorist attacks against Americans or American interests in Greece. Only one case has been solved and there is no indication of any meaningful investigation into the remaining cases. Among the unresolved cases are the attacks by the Revolutionary Organization 17 November which has claimed responsibility for the deaths of 20 people, including four Americans, since 1975. Greek authorities have never arrested a member of 17 November, which is a designated FTO. The Turkish leftist group, the Revolutionary People’s Liberation Party/Front (DHKP-C), also an FTO, has murdered four Americans since 1979 and maintains an office in Athens despite United States protests. Last year, senior Greek Government officials gave assistance and refuge to the leader of the Kurdish terrorist group, the Kurdish Workers Party (PKK).<sup>214</sup>

In the 2012 country reports, the last report issued prior to the publication of this research, the State Department stated, “Overall, Greek government cooperation with the United States

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<sup>212</sup> RAND National Defense Research Institute, “The Evolving Terrorist Threat to Southeast Asia, A Net Assessment,” 63–64, Roque, Jr., “The Philippines: the Weakest Link in the Fight Against Terrorism?,” 318.

<sup>213</sup> U.S. Department of State, *Patterns of Global Terrorism 1999*, released April 2000.

<sup>214</sup> Federation of American Scientists, “Countering the Changing Threat of International Terrorism, A Report of the National Commission on Terrorism, Pursuant to Public Law 277, 105th Congress,” 2000, <http://www.fas.org/irp/threat/commission.html>.

on counterterrorism and the physical security of American interests in Greece was strong,”<sup>215</sup> but it also noted the following.

- Seven members of Revolutionary Struggle were released from pretrial detention in October 2011. The Greek Counterterrorism Unit was not informed by the local police precinct that two of the lead members failed to show up for their required check-in (also October 2011) at the precinct until July 2012. Police have not been able to locate the two, and Greek authorities had not prosecuted the case by year’s end.
- The trial of 17 suspected members of Conspiracy of Fire Nuclei, which began in 2011, was repeatedly postponed due to work stoppages by judges and judicial postponements in 2012.
- The porous nature of Greece’s borders is of concern. While Greek border authorities try to stem the flow of illegal migration, its ability to control large-scale illegal migration via its land and sea borders with Turkey is limited.
- The recent political upheavals in North Africa and the Middle East have intensified illegal migration to and through Greece via the Greece-Turkey border and the Greek Aegean islands.<sup>216</sup>

Similarly, Turkey, a country of tremendous strategic importance due to its geographic location, has had challenges in the area of counter-terrorism. As noted in the 2012 country reports:

The limited definition of terrorism under Turkish law, restricted to activities targeting the Turkish state and its citizens, represented an impediment to effective action by Turkey against global terrorist networks. For example, although Turkish police temporarily detained several al-Qa’ida (AQ)-affiliated operatives attempting to transit through Turkey illegally in 2012, Turkish authorities chose to deport these individuals to their countries of origin quickly rather than pursue domestic legal action against them, at least in part because of the lack of appropriate legal tools.<sup>217</sup>

As a result, the designation of FTOs from the Philippines, Greece, and Turkey seems to have multiple purposes. First, the designations, which are frequently done at the request of the country involved, represents a statement of U.S. support for each country’s efforts to counter the efforts of terrorist groups seeking to undermine the government

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<sup>215</sup> U.S. Department of State, *Country Reports on Terrorism 2012*, 77.

<sup>216</sup> U.S. Department of State, *Country Reports on Terrorism 2012*, 77.

<sup>217</sup> *Ibid.*, 99.

involved. Yet, the designations also are aimed at making a significant, if not subtle, statement about U.S. displeasure with the counterterrorism efforts of the host country, and are aimed at signaling a U.S. effort to impose order in legal systems that seem insufficient to match the terrorism challenges presented by these groups.

### **3. Peace Process Detractors**

A number of groups are on the list that threatens a peace process endorsed or promoted by the United States on behalf of allied nations. For example, according to the country reports, the following groups are listed.

- PFLP—opposed to the Oslo process<sup>218</sup>
- RIRA—seeks to disrupt the Northern Ireland peace process<sup>219</sup>
- ANO—advocates the elimination of Israel and has sought to derail diplomatic relations efforts in support of the Middle East peace process<sup>220</sup>
- AS—regularly kills activists working to bring about peace through political dialogue and reconciliation<sup>221</sup>
- CIRA—The Independent Monitoring Commission, which was established to oversee the peace process, assessed that CIRA was responsible for continued terrorist acts in violation of the peace process<sup>222</sup>
- DFLP—opposes the Israel-PLO peace agreement<sup>223</sup>
- Hizballah—opposes Middle East peace negotiations<sup>224</sup>

While the number of these groups is small compared to the total number of organizations historically listed as FTOs, the potential disruption to peace process efforts is an issue consistently listed by the State Department in the country reports as to certain organizations. Furthermore, the peace processes in Northern Ireland and in the Middle

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<sup>218</sup> U.S. Department of State, *Patterns of Global Terrorism 2003*, released April 2004, 131.

<sup>219</sup> Ibid., 133; U.S. Department of State, *Country Reports on Terrorism 2008*, released April 2009, 323.

<sup>220</sup> U.S. Department of State, *Country Reports on Terrorism 2012*, 247 (ANO description).

<sup>221</sup> U.S. Department of State, *Country Reports on Terrorism 2008*, 287; see also U.S. Department of State, *Country Reports on Terrorism, 2009–2012* (Al-Shabaab Activities Section).

<sup>222</sup> U.S. Department of State, *Country Reports on Terrorism 2008*, 294.

<sup>223</sup> U.S. Department of State, *Patterns of Global Terrorism 1999*, released April 2000, 76.

<sup>224</sup> U.S. Department of State, *Patterns of Global Terrorism 2000*, released April 2001 (Hizballah Description Section).

East are both processes that the United States has been actively engaged in for lengthy periods of time. The success of achieving peace in both of these regions is of critical importance to the United States, and is critical to important U.S. allies.

Conversely, those organizations that use terrorism as a method through which to achieve its goals, but that engaged in peace negotiations with the United States to resolve the conflict politically, such as the PLO and IRA, managed to avoid an FTO designation. Therefore, engagement in or disruption of peace process efforts appears to be a factor that weighs into FTO designation decisions.

## **B. THE WARS IN IRAQ AND AFGHANISTAN**

Prior to 9/11, the country reports had minimal references to Pakistan and Afghanistan, and had no references to Iraq. The pre-9/11 references to Afghanistan and Pakistan related mostly to FTOs that had sent members to fight the Afghan war against the Soviets. While references were made to some groups supporting the Fatwa issued by Bin Laden in 1998, there were no references to the threats posed by any the groups to the security of the United States.

As Figure 7 shows, following 9/11, the references to Pakistan increased in the country reports' description of terrorist groups, from being mentioned once in 1997 to being mentioned 36 times in 2012. References to Afghanistan increased from zero in 1997, to being referenced 23 times in 2012. References to Iraq similarly changed from not being mentioned in 1997, to a peak of 33 times in 2009, to 15 times in 2012.

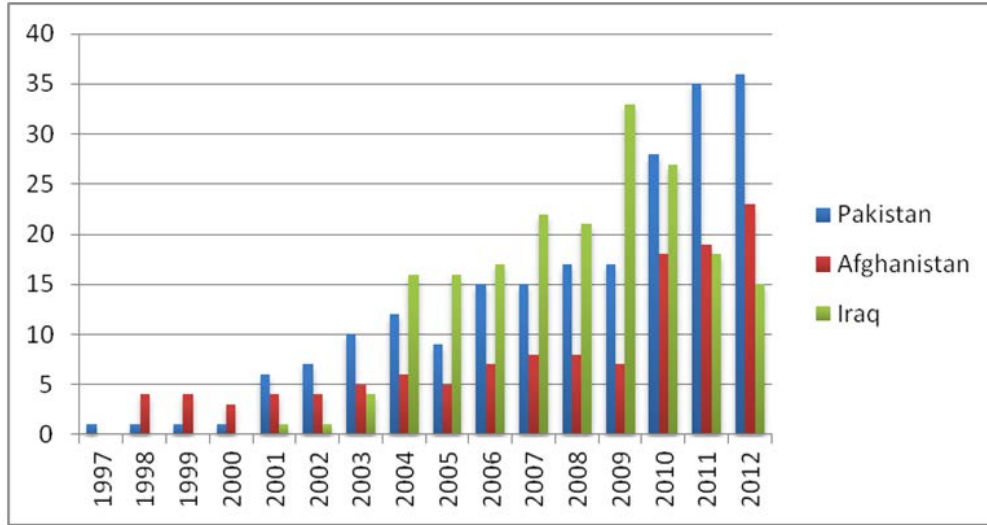


Figure 7. Graph of FTO Descriptions References to Pakistan, Afghanistan and Iraq.

Similar swings in the references to these three countries are found when analyzing the summaries of specific acts of terrorism for the FTOs in the country reports, as reflected in Figure 8. Pakistan, Afghanistan, and Iraq are not mentioned at all in the 1997, 1998 and 1999 reporting. References to the three countries increase significantly following 9/11, with references to Iraq peaking at 41 in 2009, references to Pakistan peaking at 33 in 2010, and references to Afghanistan peaking at 11 in 2010 and 2012.

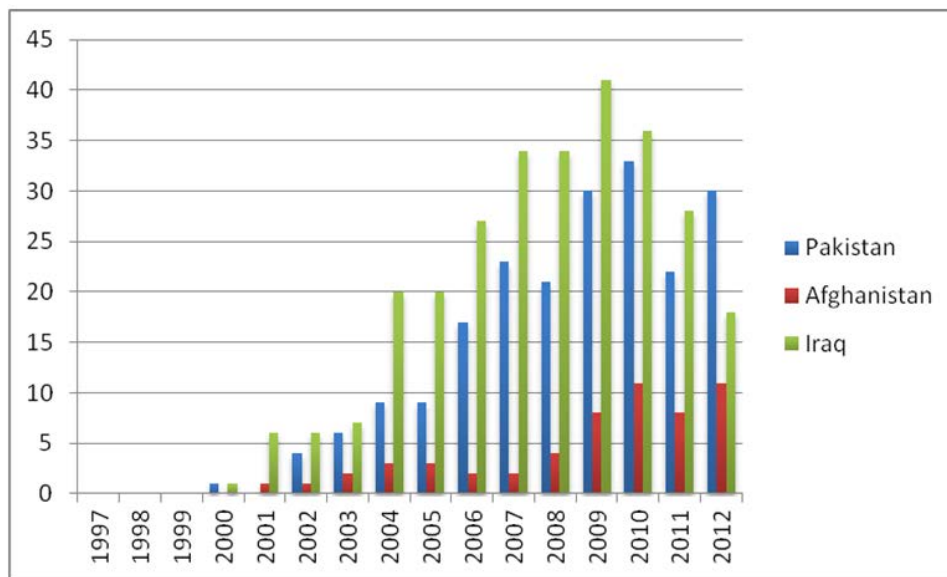


Figure 8. Graph of FTO Terrorist Activity References to Pakistan, Afghanistan, and Iraq.

The references to these countries and the terrorist activities by groups based in these countries ebbed and flowed with the development of the wars occurring in or, in the case of Pakistan, near those countries. The peaks and valleys demonstrated by the graphs correspond roughly to the level of American engagement in those countries.

Organizations that attack U.S. troops are extremely likely to be designated as an FTO. As described earlier, there was also a proliferation of FTO designations as a result of the presence of U.S. troops at war in these countries. These impacts are likely an unintended consequence of both wars. Furthermore, this again highlights the fact that the FTO list is not a predictor of which groups may be enemies of the United States in the future, or of where the next threat is likely to come from in the future. The FTO list represents, instead, a historical reflection of what has already occurred. Nevertheless, the FTO list demonstrates that when wars take place, new insurgency groups aimed at opposing U.S. efforts are likely to develop. When this takes place, those groups are likely be added to the FTO list.

### **C. INTERRELATIONSHIP WITH OTHER TERRORIST LISTS**

The terrorist lists maintained by the U.S. government include the state sponsors of terrorism list;<sup>225</sup> the not fully cooperating list;<sup>226</sup> the SDT list,<sup>227</sup> the SDGT list,<sup>228</sup> the SDN list,<sup>229</sup> the TTEL<sup>230</sup> list,<sup>231</sup> and the FTO list.<sup>232</sup> These lists have a relationship to

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<sup>225</sup> 50 U.S.C. App. § 2405(6)(j) (list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>226</sup> 22 U.S.C. § 2781.

<sup>227</sup> 50 U.S.C. § 1701, et seq. (list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>228</sup> Presidential Executive Order 13224 (list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>229</sup> Cronin, *The FTO List and Congress: Sanctioning Designated Foreign Terrorist Organizations*, 2003. (A master list that contains all of the other lists (list maintained by the Department of Treasury, Office of Foreign Assets Control).

<sup>230</sup> Ibid. (like the FTO list, the TEL includes the names of terrorist organizations, but it has a broader standard for inclusion, is subject to less stringent administrative requirements, and is not challengeable in court).

<sup>231</sup> 8 U.S.C. § 1182 (Section 411 of the *USA Patriot Act of 2001*, providing that the list is to be maintained by the Department of State).

<sup>232</sup> 8 U.S.C. § 1189(a)(1).

the FTO designation process in that groups connected to other lists or those with leaders who are named to other lists appear likely to be designated an FTO.

### **1. Relationship to State Sponsors of Terrorism**

The state sponsors of terrorism list currently includes four countries: Syria, which was added to the list in 1979, Cuba, which was added in 1982, Iran, which was added in 1984, and Sudan, which was added in 1993. In the decade prior to 2004, the same seven countries appeared on the state sponsors of terrorism list: Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria. At the same time, other countries, such as Afghanistan and Pakistan, successfully remained off the list. Since 2004, three countries, Iraq, Libya, and North Korea, have been removed, and each for different reasons—leaving the four countries on the current list: Syria, Cuba, Iran, and Sudan.

Like the FTO list, the annual State Department Country Reports on Terrorism (formerly called Patterns of Global Terrorism) describe the justification for maintaining a country on the U.S. list of state sponsors of terrorism.<sup>233</sup> The goal of this list is to discourage countries from providing critical support to non-state terrorist groups, and to make it more difficult for terrorist groups to obtain the funds, weapons, materials, and secure areas they require to plan and conduct operations.<sup>234</sup>

The FTO section of the country reports does not make a direct connection between countries sponsoring terrorism and the FTOs. However, an analysis of the country reports highlights a connection. With respect to the descriptions of the FTOs provided in the country reports, the state sponsors of terrorism are discussed frequently as illustrated in Figure 9.

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<sup>233</sup> 22 U.S.C. § 2656f.

<sup>234</sup> Larry A. Niksch, *North Korea: Terrorism List Removal*, CSR Report RL30613 (Washington, DC: Library of Congress, Congressional Research Service, November 6, 2008), 16; U.S. Department of State, *Country Report on Terrorism 2005*, April 2006, 171; U.S. Department of State, *Country Report on Terrorism 2006*, April 2007, 145.

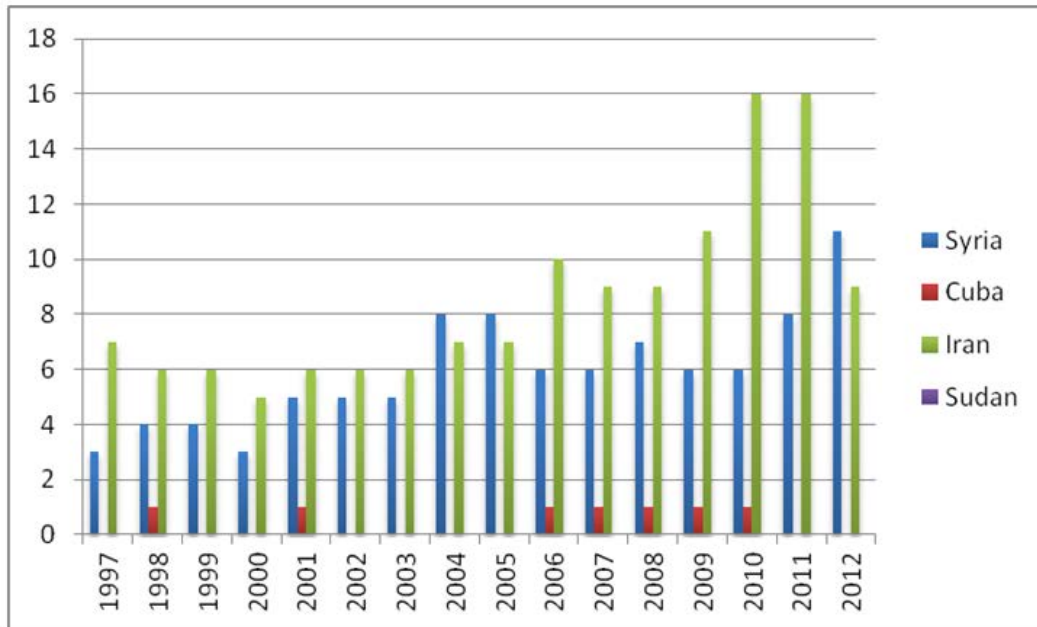


Figure 9. Graph of References to States Sponsors of Terrorism in Descriptions of FTOs.

Furthermore, as shown in Figure 10, while some countries have been removed from the state sponsors list, the seven countries that have been named to the state sponsors list have consistently been referenced in the descriptions of FTOs.

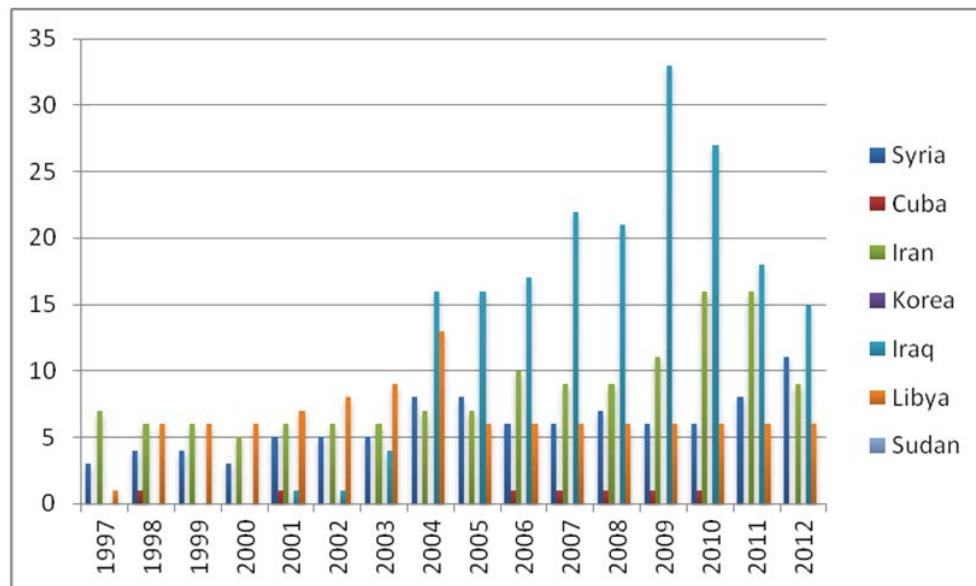


Figure 10. Graph of FTO References to State Sponsors of Terrorism (All Countries Ever So Designated) in Descriptions of FTOs.



With respect to the FTO terrorist activities described each year in the country reports, the countries currently named as state sponsors of terrorism do not, with the exception of Iran, appear frequently in the summaries of FTO terrorist activities, as demonstrated in Figure 11.

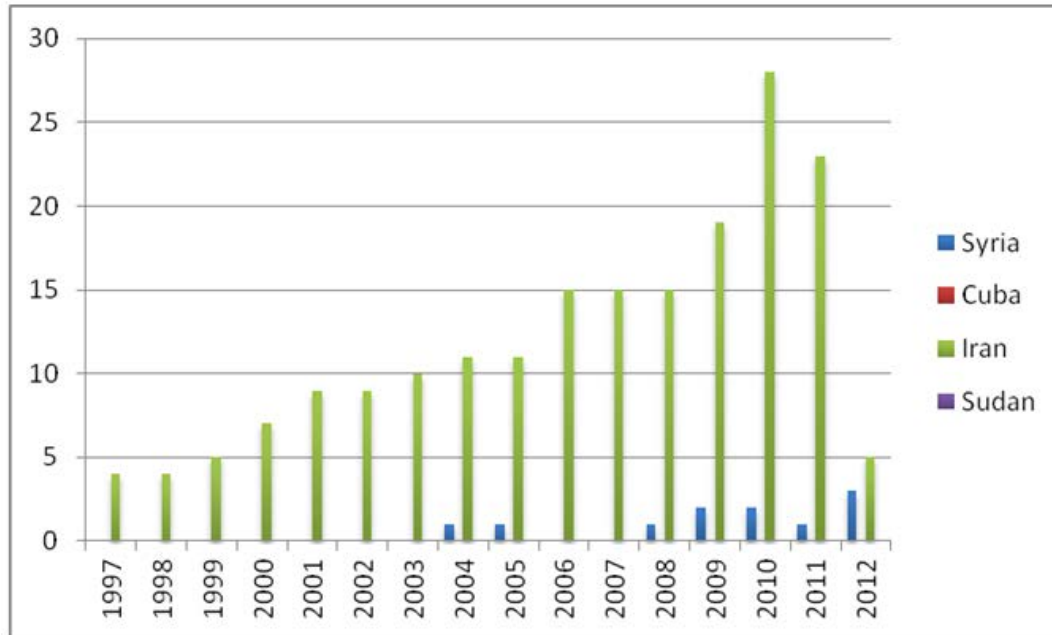


Figure 11. Graph of References to States Sponsors of Terrorism in Terrorist Activities of FTOs.

Even when analyzing all seven countries named to the state sponsors of terrorism list, the references to those state sponsors in the terrorist activities section of the country reports is relatively low, with the exception of Iraq and Iran, as shown in Figure 12.

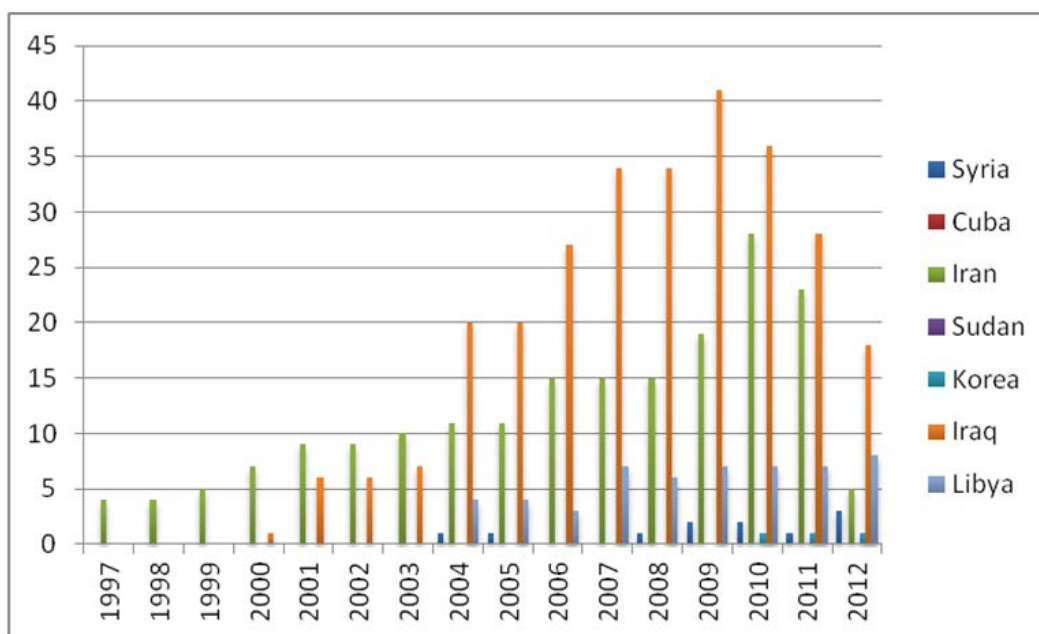


Figure 12. Graph of FTO References to State Sponsors of Terrorism (All Countries Ever So Designated) in Terrorist Activities of FTOs.

The relatively low number of references to the state sponsors of terrorism in the FTO terrorist activity section is not fully reflective of the connection between the FTOs and state sponsors. The base of operations for each FTO is provided in a separate section of the country reports. In the FTO base of operations section, 13 FTOs are identified as having a presence in or based in Syria.<sup>235</sup> In many of these cases, the country reports state that Syria provides a safe haven for these FTOs, or that Syria provides fundraising, weapons, and other training. The most explicit statement of support by Syria to a terrorist group is with respect to Hizballah about which the country reports states that the group “receives substantial amounts of financial, training, weapons, explosives, political, diplomatic and organizational aid.”

<sup>235</sup> The 13 groups are the Abu Nidal Organization (ANO): al Qaeda in Iraq (AQI), Democratic Front for the Liberation of Palestine (DFLP), Hamas, Hizballah, the Japanese Red Army (JRA), Kata'ib Hizballah (KH), Kurdistan Worker's Party (PKK), Palestine Liberation Front (PLF), Palestine Islamic Jihad (PIJ), Popular Front for the Liberation of Palestine (PFLP), Popular Front for the Liberation of Palestine-General Command (PFLP-GC), and the Revolutionary People's Liberation Party/Front (DHKP/C).

Fifteen FTOs<sup>236</sup> receive support from or have a presence in Iran.<sup>237</sup> For example, in the 2011 country reports, the State Departments states: “Iran continues to provide Hizballah with training, weapons, and explosives as well as political, diplomatic, monetary, and organizational aid.”<sup>238</sup>

Five terrorist groups are named in the country reports as having a presence in or operating in Sudan.<sup>239</sup> The case of Sudan, however, is complex. Beginning in 2006, Sudan was recognized for taking renewed steps to deter terrorists from operating within its borders, for increasing its international information sharing, and for strengthening its legal efforts to fight terrorism. Due to its progress in combating terrorist activity, Sudan was removed from the list of states not fully cooperating with U.S. anti-terrorism efforts.<sup>240</sup> This recognition continued in the 2011 country reports on terrorism, in which the State Department found that “Sudan was a cooperative counterterrorism partner of the United States.” The report also notes, however, that gaps remain in the government’s knowledge of and its ability to identify and capture violent extremists going to Iraq and Afghanistan. It also noted that Sudan maintains a relationship with Hamas (which Sudan does not consider a terrorist group), and that Sudan has maintained a relationship with Iran.<sup>241</sup> As a result, it is the one country on the state sponsors of terrorism list, but is not on a separate list called the “not fully cooperating” list. As a result, an FTO’s relationship with Sudan is likely to have less of an impact of the FTO designation process than a country that has not taken positive measures to be removed from the list. Thus, an FTO’s

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<sup>236</sup> This does not include two groups designated as FTOs opposed to the Iranian government, namely the MEK and Jundallah. While these groups are or were present in Iran, they are not receiving support from the government of Iran. In addition, the list does not include those FTOs that seek to emulate Iran, such as ASG that seeks to promote and Iranian-style Islamic State.

<sup>237</sup> The 15 groups are Abu Nidal Organization (ANO), al-Asqa Martyrs Brigade (AAMB), al Qaeda in Iraq (AQI), al Qaeda in the Islamic Maghreb (AQIM), Ansar al-Islam (AAI), Armed Islamic Group (GIA), Gama’a al-Islamiyya (IG), Hamas, Hizballah, Islamic Movement of Uzbekistan (IMU), al Jihad; Kata’ib Hizballah (KH), Kurdistan Worker’s Party (PKK), Palestine Islamic Jihad–Shaqaqi Fraction (PIJ), and Popular Front for the Liberation of Palestine-General Command (PFLP-GC).

<sup>238</sup> U.S. Department of State, *Country Report on Terrorism 2011*, July 2012, 236.

<sup>239</sup> The five groups are Abu Nidal Organization (ANO), al-Qaeda in the Islamic Maghreb (AQIM), Armed Islamic Group (GIA), Gama’a al-Islamiyya (IG) and al-jihad (which merged into AQ).

<sup>240</sup> Preeti Bhattacharji, *State Sponsors: Sudan, Council on Foreign Relations*, April 2, 2008.

<sup>241</sup> U.S. Department of State, *Country Report on Terrorism 2011*, 173.

relationship with Sudan may not have the same impact on a designation decision as an FTO's relationship with a country like Syria or Iran.

The fourth country on the state sponsors of terrorism list is Cuba. According to the country reports, Cuba has played a role in supporting the Basque Fatherland and Liberty (ETA), National Liberation Army (ELN), and Revolutionary Forces of Colombia (FARC). However, the inclusion of Cuba as a state sponsor of terrorism itself is the subject of criticism. This criticism is based on the threat from Cuba ended in the early 1990s when the Soviet Union dissolved (resulting in the end to the supplies and training provided by the Soviets).<sup>242</sup> No evidence exists to suggest that Cuba is operationally engaged in supporting terrorist activity (in contrast to other state sponsors cited for activities that involve planning or conducting operations, allowing terrorists to use their national territory as a base of operations, or selling arms to terrorist groups). Further, other undesignated countries are promoting terrorism or are failing to restrain terrorist operations in their territory to a much larger extent than Cuba.<sup>243</sup>

Cuba was added to the state sponsors of terrorism list in 1982, due to its support for communist rebels in Africa and Latin America. While Cuba remains on the state sponsors of terrorism list, the State Department has also recognized that Cuba's inclusion is a "carryover from the cold war" and that "it is unlikely that Cuba will be removed from the terrorism list, absent a regime change."<sup>244</sup> In recent years, the State Department has also recognized that Cuba "no longer actively supports armed struggles in Latin America and other parts of the world"<sup>245</sup> and that, "The United States has no evidence of terrorist-related money laundering or terrorist financing activities in Cuba." The 2009 country reports states, "There was no evidence of direct financial support for terrorist organizations by Cuba in 2009." The 2010 country reports states, "The Cuban

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<sup>242</sup> Phillip Peters, *Cuba, the Terrorism List, and What the United States Should Do* (Lexington Institute, November 20, 2001).

<sup>243</sup> Ibid.

<sup>244</sup> Raphael Perl, *The Department of State's Patterns of Global Terrorism Report: Trends, State Sponsors, and Related Issues*, Order Code RL32417 (Washington, DC: Library of Congress, Congressional Research Service, June 1, 2004), 4.

<sup>245</sup> U.S. Department of State, *Country Report on Terrorism 2008*, 182.

government and official media publicly condemned acts of terrorism by Al Qaida and affiliates.”

The 2011 country reports, however, also notes that current and former members of terrorists groups, specifically the members of the ETA and FARC are residing in Cuba. Although the report also states that, “There was no indication that the Cuban government provided weapons or paramilitary training for either ETA or the FARC.”<sup>246</sup> The 2012 country reports states “that the Cuban government was trying to distance itself from Basque Fatherland and Liberty (ETA) members living on the island by employing tactics such as not providing services including travel documents to some of them.”<sup>247</sup> At the same time, the 2012 report concluded that, “The Government of Cuba continued to provide safe haven to approximately two dozen ETA members.”<sup>248</sup>

Critics argue that the reasons for maintaining Cuba’s designation are disingenuous because ETA members are being allowed to live in Cuba pursuant to a decades-old bilateral agreement with Spain, and that Spain has publicly stated its appreciation for Cuba’s willingness to deal with the group.<sup>249</sup> Moreover, a 2007 Congressional Research Service report states that the Colombian government has publicly stated that Cuba has played a useful role in facilitating peace talks with the rebels.<sup>250</sup>

While the inclusion of Cuba on the state sponsors of terrorism list is considered, even by the State Department, as a remnant of the Cold War, the inclusion of the FTOs that apparently have received aid from Cuba can similarly be considered based on Cold War era thinking. For example, according to the country reports, the ELN is a Colombian Marxist-Leninist group formed in 1964 by intellectuals inspired by Fidel Castro and Che Guevara, the ETA was founded in 1959 with the aim of establishing an independent homeland based on Marxist principles, and the FARC was established in 1964 as the

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<sup>246</sup> U.S. Department of State, *Country Report on Terrorism 2011*, 171.

<sup>247</sup> U.S. Department of State, *Country Report on Terrorism 2012*, released July 2013, 195.

<sup>248</sup> *Ibid.*

<sup>249</sup> John Adams and David W. Jones, “Is Cuba a State Sponsor of Terrorism?,” *The Hill*, March 21, 2012.

<sup>250</sup> *Ibid.*

military wing of the Colombian Communist Party. While the FARC, ETA and ELN remain on the FTO list, their designations are more historical in nature. As with Sudan, an FTO's relationship with Cuba is not likely to have a significant impact on a designation process in the post-9/11 era.

Nevertheless, the relationship of an FTO to a designated state sponsor of terrorism appears to be an influencing factor in the designation of an FTO. Support from a country like Iran or Syria is likely to have greater influence on the FTO designation process than from Cuba or Sudan.

## **2. Relationship to Other Terrorism Lists**

In addition to the state sponsors of terrorism list, organizations named to the FTO list also tend to have a relationship to other lists maintained by the U.S. government. Little of this information, however, is provided by the State Department in the country reports.

For example, in 2013, the secretary of state designated al-Mulathamun Battalion. The United Nations designated its leader, Mokhtar Belmokhtar, as an al Qaeda-affiliated terrorist, in 2003, and the U.S. Treasury Department listed him as a terrorist financier. In addition, the United States posted a \$5 million reward for his capture under the rewards for justice program.<sup>251</sup> As noted earlier, he was also indicted in the Southern District of New York for his terrorist-related activities.<sup>252</sup> In June 2004, a tribunal in Algeria sentenced Belmokhtar in absentia to life in prison for forming terrorist groups, robbery, and use of illegal weapons. In March 2007, an Algerian court sentenced Belmokhtar to death in absentia.

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<sup>251</sup> Lee Ferran, "Alive After All? U.S. Offers \$5M for Mokhtar Belmokhtar," *ABC News*, June 3, 2013, <http://abcnews.go.com/blogs/headlines/2013/06/alive-after-all-u-s-offers-5m-for-mokhtar-belmokhtar/>; U.S. Department of State, "Rewards for Justice—First Reward Offers for Terrorists in West Africa," June 3, 2013, <http://www.state.gov/r/pa/prs/ps/2013/06/210204.htm>.

<sup>252</sup> The Federal Bureau of Investigation, "Charges Filed in Manhattan Federal Court Against Mokhtar Belmokhtar for His Role in Terror Attack in Algeria and Other Crimes," July 19, 2013, <http://www.fbi.gov/newyork/press-releases/2013/charges-filed-in-manhattan-federal-court-against-mokhtar-belmokhtar-for-his-role-in-terror-attack-in-algeria-and-other-crimes>.

Similarly, in 2011, the Haqqani Network was designated by the State Department. The Congressional Research Service refers to the Haqqani Network as “as the most dangerous Afghan insurgent groups battling U.S.-led forces in eastern Afghanistan.” “It is widely recognized as a semi-autonomous component of the Taliban and as the deadliest and most globally focused faction of that latter group.”<sup>253</sup> As with other FTOs, many of the organization’s leaders have been added to the SDGT list. On November 1, 2011, the U.S. Government added Haji Mali Kahn to a list of specially designated global terrorists under Executive Order 13224.<sup>254</sup> Five other top Haqqani Network leaders have been placed on the list of specially designated global terrorists under Executive Order 13224 since 2008.<sup>255</sup>

While occasionally the country reports indicate an FTO’s relationship to another terrorist list, the information is not provided consistently. Frequently, the information is provided in the press release that announces a group’s FTO designation but that information is not always provided in the country reports.

### **3. Relationship to Terrorist Lists Maintained by Other Countries**

As explained previously, a number of other countries to include the United Kingdom, Canada, and Australia, each have developed terrorism lists that identify

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<sup>253</sup> Gretchen Peters, “Combating Terrorism Center, West Point, Haqqani Network Financing: The Evolution of an Industry,” July 2012, [http://www.ctc.usma.edu/wp-content/uploads/2012/07/CTC\\_Haqqani\\_Network\\_Financing-Report\\_Final.pdf](http://www.ctc.usma.edu/wp-content/uploads/2012/07/CTC_Haqqani_Network_Financing-Report_Final.pdf).

<sup>254</sup> The Department of State described Khan as “a Haqqani Network commander” who has “overseen hundreds of fighters, and has instructed his subordinates to conduct terrorist acts.” The designation continued, “Mali Khan has provided support and logistics to the Haqqani Network, and has been involved in the planning and execution of attacks in Afghanistan against civilians, coalition forces, and Afghan police.” U.S. Department of State, “Designation of Haqqani Network Commander Mali Khan,” November 1, 2011, <http://www.state.gov/r/pa/prs/ps/2011/11/176452.htm>. According to Jason Blazakis, the chief of the Terrorist Designations Unit of the Department of State, Khan also has links to al-Qaeda. U.S. House of Representatives, Permanent Select Committee on Intelligence, “H.R. 6036, 112th Congress, 2d Session, 4,” 2012, <http://intelligence.house.gov/sites/intelligence.house.gov/files/documents/HaqqaniVersion2.pdf>.

<sup>255</sup> U.S. Department of State, “Designation of Haqqani Network Commander Mali Khan.” Sirajuddin Haqqani, the overall leader of the Haqqani Network, as well as the leader of the Taliban’s Mira shah Regional Military Shura, was designated by the Secretary of State as a terrorist in March 2008, and in March 2009, the Secretary of State put out a bounty of \$5,000,000 for information leading to his capture. The other four individuals so designated are Nasiruddin Haqqani, Khalil al Rahman Haqqani, Badruddin Haqqani, and Mullah Sangeen Zadran. U.S. Department of State, “Individuals and Entities Designated by the State Department Under Executive Order 13224,” September 26, 2013, <http://www.state.gov/j/ct/rls/other/des/143210.htm>.

international terrorist organizations outlawed in their country. In addition to lists being maintained by the other countries, the EU and the United Nations also maintain lists. In the country reports, however, the United States rarely acknowledges when an FTO appears on a terrorist list of another country.

In fact, significant overlap occurs between the lists maintained by the United States, Canada, the United Kingdom, and Australia. Of the 18 organizations listed by Australia, all are on the U.S. FTO list. Of the 51 organizations listed by the United Kingdom, 32 are on the U.S. FTO list. Of the 46 organizations listed by Canada, 34 are on the U.S. FTO list.

While many distinctions occur between the lists, such as the United Kingdom having a significant focus on Northern Ireland-based terrorist groups, significant overlap also occurs. The high overlap among these allied nations indicates that the countries have influence over each other in the designation of terrorist organizations, and have a common unifying interest served by collectively identifying certain groups as terrorists. This connectivity between allied nations is another factor that influences the designation process.

#### **4. Relationship to Other FTOs on the List**

Thirty-four FTOs were designated following 9/11. All but two<sup>256</sup> of these post-9/11 FTOs are affiliated in some way with another terrorist organization. Twenty-eight of the designated FTOs are organizations affiliated with al Qaeda or are identified as a radical Islamic group.

The pre-9/11 groups have fewer identified connections to existing terrorist groups. Many of the groups designated pre-9/11 were founded on communist principles as opposed to being inspired by another terrorist group. Nevertheless, approximately half of the FTOs designated pre-9/11 had an association with other terrorism groups.

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<sup>256</sup> The two groups for which the country reports do not indicate a connection to another terrorist organization are Jundallah and the Communist Party of the Philippines/New People's Army (CPP/NPA).



## **5. Relationship to Terrorist Splinter Groups**

A number of the FTOs currently designated are splinter groups of FTOs and other terrorist organizations that pre-existed the creation of the FTO list (and therefore were never formally named), or are former terrorist groups that no longer espouse the use of violence to further their goals.

For example:

- Abu Nidal Organization (ANO): split from the Palestine Liberation Organization (PLO) in 1974.
- Abu Sayyaf Group (ASG): split from the Moro National Liberation Front in 1991.
- al-Aqsa Martyrs Battalion: split from the Fatah party to attack Israeli military targets and settlers with the aim of driving Israel from the West Bank and Gaza Strip and establishing a Palestinian state.
- Al-Qa'ida in the Islamic Maghreb (AQIM): The Salafist Group for Call and Combat (GSPC), a splinter group of the Armed Islamic Group (GIA).
- The Continuity Irish Republican Army (CIRA): formed in the mid 1990s after it split from Sinn Fein in 1986, believes it is carrying on the original Irish Republican Army's (IRA).
- Democratic Front for the Liberation of Palestine (DFLP): founded in 1969 when it split from the Popular Front for the Liberation of Palestine (PFLP).
- Harakat-ul Jihad Islami (HUJI): HUJI has experienced a number of internal splits and a portion of the group has aligned with al-Qa'ida (AQ) in recent years, including training its members in AQ training camps.
- Islamic Jihad Union (IJU): splintered from the Islamic Movement of Uzbekistan.
- Jaish-e-Mohammed: By 2003, JEM had splintered into Khuddam ul-Islam (KUI) and Jamaat ul-Furqan (JUF).
- Palestine Liberation Front, Abu Abbas Faction (PLF): broke away from the PFLP-GC in mid-1970s. Later split again into pro-PLO, pro-Syrian, and pro-Libyan factions.
- Popular Front for the Liberation of Palestine-General Command (PFLP-GC): Split from the PFLP in 1968, claiming that it wanted to focus more on fighting and less on politics.

- Revolutionary People's Liberation Party/Front (DHKP/C): a splinter faction of the Turkish People's Liberation Party/Front. Renamed in 1994 after factional infighting.

The above are just 12 examples of splinter groups that have been designated as FTOs. As noted in many of the FTO descriptions, the splinter group frequently separated from the main group in an effort to become more violent or due to a disagreement over moving into the political arena.

The splinter groups that have been designated FTOs demonstrate that even when political or other issues have resulted in the disbanding, elimination, or neutralization of a terrorist group, that new splinter terrorist groups may emerge that may be even more radical than the original group. As a result, it appears that being a splinter group of a known terrorist group, particularly when the splinter group advocates increased violence, is a factor that influences the FTO designation process.

#### **D. SUMMARY OF THE NONSTATUTORY FACTORS**

Figure 13 represents a visual depiction of the nonstatutory factors identified in this research.



Figure 13. The Nonstatutory Factors

## VIII. UNDERSTANDING FTO DECISIONS

*Doing what's right isn't the problem. It is knowing what's right.*

—Lyndon B. Johnson,  
36th U.S. President

The previous chapters analyzed the FTO list and identified the nonstatutory factors that influence FTO decisions. That analysis, however, is incomplete without addressing how these nonstatutory factors are utilized in the highly complex counterterrorism environment. Understanding these decisions and how the nonstatutory factors are applied, adds to an understanding of the FTO list and helps address the criticisms of the FTO decisions presented in the literature. As noted previously, the FTO list has been criticized for representing a mixture of the “apples and oranges” of terrorist organizations. The FTO list includes groups based on Islamic ideologies and those based on Marxist ideologies, ethnic-based groups, Palestinian groups seeking a peaceful solution and those seeking to unravel peace negotiations, non-Palestinian leftist groups, European groups, radical Islamists, small Jewish groups, and idiosyncratic groups. Small groups with less than 100 members, and large groups numbering in the tens of thousands are also included.

This chapter analyzes the nonstatutory factors more closely, and specifically through the lens of the Cynefin Framework, which assists in understanding the complex FTO decisions. While the FTO list reflects a diverse collection of terrorist organizations that initially appear to represent a disconnected list of organizations, the list, the nonstatutory factors that influence the FTO decisions identified in this research, and the FTO decision-making process itself, reflect the complex nature of U.S. foreign relations and strategy.

### A. CYNEFIN FRAMEWORK

The FTO decisions represent a methodical system used by the United States to define those who represent a terrorist threat to the nation. The designation decision for some organizations is simple, with others, it is complicated, with others complex, and

with others, it is chaotic. The Cynefin Framework assists in evaluating the many factors that can help determine when and under what circumstances certain organizations are designated, removed, or omitted.<sup>257</sup>

The Cynefin Framework is a “sense-making” tool, and is a way in which to “make sense of a wide range of unspecified problems . . . The framework is particularly useful in collective sense-making, in that it is designed to allow shared understandings to emerge.”<sup>258</sup> The basic concepts of the Cynefin Framework are illustrated in Figure 14.

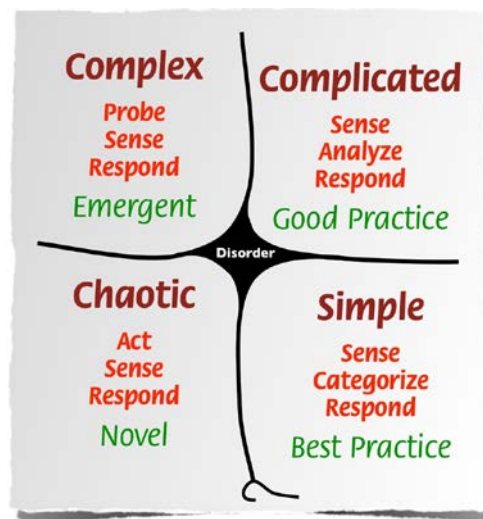


Figure 14. Cynefin Framework

Using these factors, more fully described by David J. Snowden and Mary E. Boone in their *Harvard Business Review* article titled, “A Leader’s Framework for Decision Making,”<sup>259</sup> the State Department’s decisions to include or exclude organizations from the FTO list can be explained. The analysis further demonstrates that the FTO decisions are tailored to U.S. counterterrorism priorities and strategies, and the complexity of that evolving strategy.

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<sup>257</sup> David J. Snowden and Mary E. Boone, “A Leader’s Framework for Decision Making,” *Harvard Business Review*, November 2007.

<sup>258</sup> Cynthia F. Kurtz and David J. Snowden, “The New Dynamics of Strategy: Sense-Making in a Complex and Complicated World,” *IBM Systems Journal* 42, no. 3 (2003): 468.

<sup>259</sup> Snowden and Boone, “A Leader’s Framework for Decision Making.”

## **1. The Simple Decisions**

Under the Cynefin Framework, simple contexts are characterized by stability and clear cause-and-effect relationships easily discernible by everyone.<sup>260</sup> Problems can arise in this context when situations change or when new ways of analyzing a relationship develops. Further, complacency could result in this scenario due to a failure to review the details associated with a situation thoroughly. When this happens, simplicity can develop into chaos.<sup>261</sup>

In the FTO decision-making context, a number of scenarios could be characterized as the simple FTO designations. In other words, those situations in which certain nonstatutory factors exist that will likely result in the United States designating a foreign organization as an FTO. These factors include if the organization has killed a U.S. citizen or attacked a U.S. embassy, if the organization is affiliated with al Qaeda, and if the organization seeks the destruction of Israel. As described previously, approximately 85% of organizations added to the FTO list following 9/11 attacked a U.S. interest or killed a U.S. citizen, 82% of groups designated to the FTO list following 9/11 are aligned in some manner to al Qaeda, and 75% of the groups on the FTO list are opposed to the State of Israel. The existence of these nonstatutory factors appear to be clear indicators that an organization will be designated an FTO and, therefore, these designation decisions could be categorized as “simple” decisions.

Even though these decisions appear simple, and it may be difficult to conceptualize situations in which the United States might compromise on any of these core national principles; it is this sort of situation in which analysis is required to ensure “complacency” does not develop in evaluating these factors. It will be important to be aware of issues that can result in these seemingly simple decisions turning complex or even chaotic. For example, peace negotiations in the Middle East could begin to impact FTO decisions with respect to Israel if political concessions are given to organizations seeking to legitimize themselves through the peace process. In such scenarios, it is

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<sup>260</sup> Snowden and Boone, “A Leader’s Framework for Decision Making,” 2.

<sup>261</sup> Ibid.

possible that the secretary of state may not designate a group, may postpone a designation to determine the outcome of negotiations, or may delist a group in order to advance the peace process.

## **2. The Complicated Decisions**

The next category of decisions is the complicated decisions, which include decisions for which there may be multiple rights answers. In this category of decisions, although a clear relationship exists between cause and effect, it is not necessarily evident to those reviewing the decisions.<sup>262</sup> According to Snowden and Boone, “while leaders in a simple context must sense, categorize, and respond to a situation, those in a complicated context must sense, analyze, and respond.”<sup>263</sup> The concern in this context of decision making is when entrained thinking (such as “this is the way we have always looked at this issue”) impedes decision making and creativity in the decision-making process. Another potential danger in this category is “analysis paralysis,” in which decisions cannot be made due to entrained thinking on the issues.<sup>264</sup>

With respect to FTO decisions, terrorist splinter groups, groups that oppose peace processes, and groups that have never attacked the United States fall into this decision-making category. FTO decisions involving these groups are difficult because it may not be clear which groups have splintered from another group, actually present a sustained terrorist threat, have the strength and capabilities to engage in actual terrorist activities, or pose a continued threat over time. Furthermore, the difficulty posed by these groups is that they may be difficult to identify as a threat until well after they have engaged in numerous acts of terrorism.

Also, in this category of complicated decisions, are groups founded on communist principles. These types of groups, and the potential threat they pose to U.S. interests, represent Cold War era thinking. Thus, in the early years of the FTO list, some of the designated communist terrorist groups may have been added under the traditional

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<sup>262</sup> Snowden and Boone, “A Leader’s Framework for Decision Making,” 3–4.

<sup>263</sup> *Ibid.*, 3.

<sup>264</sup> *Ibid.*, 4.

thinking that the greatest security threat to the United States continued to emanate from communism.

FTOs that appear to be dormant also fall into this category of complicated decision making. When the FTO list was first developed, dormant groups were far more prevalent on the list, as the list included organizations that historically posed a threat as opposed to representing current threats. Many of those groups have since been removed. Over time, however, some other groups previously active have become dormant and continue to be on the FTO list. The decision whether to remove such groups is complicated because, in many instances, it may be unclear whether they have the potential to pose a continued threat or whether they have been sufficiently neutralized that the threat no longer exists. Such decisions are complicated.

### **3. The Complex Decisions**

In a complex decision-making context, at least one right answer is possible, but the correct decision is not easily identifiable.<sup>265</sup> “Most situations and decisions in organizations are complex because some major change . . . introduces unpredictability and flux.”<sup>266</sup> The challenges in this context are that leaders may be tempted to fall into traditional command-and-control management styles, when the context may require more experimentation.<sup>267</sup>

With respect to the FTO decision-making process, the complex decisions are those decisions involving allied nations. As noted previously, a variety of reasons exist as to why FTOs based in allied nations are designated. The reasons include a U.S. citizen was killed by the group, a U.S. interest, such as an embassy was attacked, the allied nation has a poor record in meeting terrorism challenges, the allied nation is strategically situated and success in that country could limit the spread of terrorism, the allied nation has requested the designation of the group, and the United States has been actively engaged in peace efforts in that nation or involving that particular terrorist group. A

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<sup>265</sup> Snowden and Boone, “A Leader’s Framework for Decision Making,” 5.

<sup>266</sup> Ibid.

<sup>267</sup> Ibid.



complex set of issues are evaluated when determining which allied nations the United States supports through the naming of terrorist organizations that seek to undermine its government. In many cases, these organizations do not pose a direct threat to the United States, but protection of that allied nation and its government from the spread of terrorism is of strategic importance to the United States. The decision about whether to designate a group may not always be clear, because of the broader policy and strategic issues involved.

#### **4. The Chaotic Decisions**

In a chaotic context, relationships between cause and effect are impossible to determine because they shift constantly and no manageable pattern exists—only turbulence.<sup>268</sup> This is considered the realm of the “unknowables.”<sup>269</sup>

With respect to the FTO list, these decisions occur in response to terrorist attacks that have taken place where the group is not already designated. Admittedly, in the FTO decision-making context, it is somewhat difficult to characterize any decision as fully “chaotic” since every decision made occurs over the course of months with what could be perceived as sufficient time to deliberate about the issues and to obtain information supporting a designation. However, in this situation, the terrorist group is a new or emerging group and little information is likely available about the group. The exact nature of the group’s leadership, objectives, strength, and capabilities may be unknown. In addition, in this chaotic context, many external factors likely impacting the decision-making process.

For example, on January 10, 2014, three additional FTOs were designated, namely: Ansar al-Shari’a in Benghazi, Ansar al-Shari’a in Darnah, and Ansar al-Shari’a in Tunisia, all of which were related to terrorist attacks against U.S. interests. The events that resulted in these groups being designated have been the subject of much inquiry, concern, and investigation. Most significantly, the events surrounding the attacks in Benghazi, and the murder of U.S. Ambassador Christopher Stevens, has been the subject

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<sup>268</sup> Snowden and Boone, “A Leader’s Framework for Decision Making,” 5.

<sup>269</sup> Ibid.

of media investigations,<sup>270</sup> Congressional hearings and reports,<sup>271</sup> a State Department independent review,<sup>272</sup> and considerable public debate. Throughout these reports and the resulting debates, the actions and inactions by the State Department have been under tremendous scrutiny,<sup>273</sup> even by the department itself, which convened an independent report on its actions.<sup>274</sup>

It is likely not coincidental that the designation of the groups associated with the Benghazi attacks occurred five days before the release of the U.S. Senate's Committee on Intelligence Report on Benghazi. The designation then could be seen as an effort to demonstrate that the State Department was taking affirmative steps to identify the terrorists responsible for the attack, and to further define the terrorism threat to the United States before the U.S. Senate would again criticize the State Department for its handling of the events surrounding the terrorist attack.

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<sup>270</sup> See e.g., David D. Kirkpatrick, "A Deadly Mix in Benghazi," *The New York Times*, December 28, 2103, <http://www.nytimes.com/projects/2013/benghazi/#/?chapt=0>; Adam Goldman and Anne Gearan, "Senate Report: Attacks on U.S. Compounds in Benghazi Could Have Been Prevented," *The Washington Post*, January 15, 2013, [http://www.washingtonpost.com/world/national-security/senate-report-attack-on-us-compound-in-benghazi-could-have-been-prevented/2014/01/15/5e197224-7de9-11e3-95c6-0a7aa80874bc\\_story.html](http://www.washingtonpost.com/world/national-security/senate-report-attack-on-us-compound-in-benghazi-could-have-been-prevented/2014/01/15/5e197224-7de9-11e3-95c6-0a7aa80874bc_story.html); Michael Zennie, "Revealed: Ringleader Behind al-Qaeda Attack that Killed U.S. Ambassador was Former Guantanamo Inmate Handed Over to Libya by America," *The Daily Mail*, September 19, 2012, <http://www.dailymail.co.uk/news/article-2205825/Sufyan-Ben-Qumu-Former-Gitmo-inmate-planned-al-Qaeda-attack-Libyan-consulate.html>.

<sup>271</sup> NBC News, "Congressional Report Lambastes Security at U.S. Consulate in Benghazi," December 31, 2012, [http://usnews.nbcnews.com/\\_news/2012/12/31/16258960-congressional-report-lambastes-security-at-us-consulate-in-benghazi?lite](http://usnews.nbcnews.com/_news/2012/12/31/16258960-congressional-report-lambastes-security-at-us-consulate-in-benghazi?lite); Joseph I. Lieberman and Susan M. Collins, "Flashing Red: A Special Report on the Terrorist Attack at Benghazi," *United States Senate Committee on Homeland Security and Governmental Affairs*, December 30, 2012, [http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.hsgac.senate.gov%2Fdownload%2Fflashing-red-hsgac-special-report&ei=jcfaUoreJITeoASw1oKgDw&usg=AFQjCNFhyUkiZfuwwfcyx1oYR2UnuOSe0g&sig2=4IEAmStZ\\_yGi9JEGuNQFzQ&bvm=bv.59568121,d.cGU](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCkQFjAA&url=http%3A%2F%2Fwww.hsgac.senate.gov%2Fdownload%2Fflashing-red-hsgac-special-report&ei=jcfaUoreJITeoASw1oKgDw&usg=AFQjCNFhyUkiZfuwwfcyx1oYR2UnuOSe0g&sig2=4IEAmStZ_yGi9JEGuNQFzQ&bvm=bv.59568121,d.cGU); Senate Select Committee on Intelligence, United State Senate, 113th Congress, "Review of the Terrorist Attacks on U.S. Facilities in Benghazi Libya, September 11–12, 2012," January 15, 2014, <http://www.gpo.gov/fdsys/pkg/CRPT-113s rpt134/pdf/CRPT-113s rpt134.pdf>.

<sup>272</sup> U.S. State Department, Accountability Review Board, "Accountability Review Board (ARB) Report," 2012, <http://www.state.gov/documents/organization/202446.pdf>.

<sup>273</sup> See e.g., NBC News, "Congressional Report Lambastes Security at U.S. Consulate in Benghazi"; NBC News, "Benghazi Report Blames 'Systemic Failures' Within State Department," December 18, 2012, [http://worldnews.nbcnews.com/\\_news/2012/12/18/16002158-benghazi-report-blames-systemic-failures-within-state-department?lite](http://worldnews.nbcnews.com/_news/2012/12/18/16002158-benghazi-report-blames-systemic-failures-within-state-department?lite).

<sup>274</sup> U.S. State Department, Accountability Review Board, "Accountability Review Board (ARB) Report."

Another chaotic situation arose, not in the designation arena but in the delisting of an organization—the MEK. The multitude of issues swirling around the MEK created a chaotic situation for the State Department decision-making process. The MEK’s political and lobbying efforts overshadowed the fact that prosecutions of the organization for its terrorist activities occurred in the United States and in many allied nations,<sup>275</sup> the MEK was involved in the 1979 takeover of the U.S. embassy in Iran,<sup>276</sup> the MEK used weapons against U.S. troops at the beginning of the Iraq war,<sup>277</sup> and the MEK possessed a large and powerful cache of military-style weapons in Iraq.<sup>278</sup> In fact, in 1999, the District of Columbia Circuit Court found, relying on a 1993 intelligence research paper from the Central Intelligence Agency, that the MEK:

Is the largest and most active Iranian dissident group. Its primary goal is the overthrow of the Iranian Government, after which it would seek to establish a non-theocratic republic . . . . The [MEK’s] history, marked by violence and terrorism, belies its claim to uphold democratic ideals. Formed in the early 1960s, its origins reflect both Marxist and Islamic influences, and its history is studded with anti-Western activity.<sup>279</sup>

As a result of the prosecutions and military actions, the MEK’s terrorist capabilities and financial support ended.<sup>280</sup> While those actions were successful in neutralizing the MEK as a terrorist organization, the group became a problem to the United States as the war in Iraq continued, as the U.S. military ultimately had to protect

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<sup>275</sup> Ibid.; See e.g., Jarrett Murphy, “French Hold Iran Opposition Sweep,” *CBS News*, June 17, 2003, <http://www.cbsnews.com/news/french-hold-iran-opposition-sweep/>.

<sup>276</sup> U.S. Department of State, *Country Reports on Terrorism 2011*, 48–250; Audrey Kurth Cronin, *Foreign Terrorist Organizations*, Order Code RL32223 (Washington, DC: Library of Congress, Congressional Research Service, February 6, 2004), 66–67; Interview with Daniel Fried, Special Advisor to the Secretary on Camp Ashraf, U.S. Department of State, “Coordinator for Counterterrorism Ambassador Daniel Benjamin and Special Advisor to the Secretary on Camp Ashraf Ambassador Daniel Fried on the Mujahedin-e Khalq (MEK) Designation and the Current Situation at Camp Ashraf.”

<sup>277</sup> *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010).

<sup>278</sup> Ibid.

<sup>279</sup> *People’s Mojahedin Organization of Iran v. United States Dep’t of State*, 182 F.3d 17, 20 (D.C. Cir. 1999).

<sup>280</sup> Ibid., *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010); Murphy, “French Hold Iran Opposition Sweep.”

the MEK members in Iraq,<sup>281</sup> and it became difficult to re-locate the MEK members who remained in Iraq.<sup>282</sup> Ultimately, the group was delisted.<sup>283</sup>

The chaotic scenarios represented by the Benghazi events and the MEK delisting issues reflect different but equally challenging circumstances in which events external to the State Department's deliberative process intervened to compel action. David F. Kettl discussed the reaction of government to external events in his book, *System Under Stress, Homeland Security and American Politics*, wherein he explains that the political system used to address most public policy problems remains constant most of the time, with change occurring incrementally.

However, forces tend to build then erupt explosively in large, fundamental change when big events roil the political system. Important political questions are often ignored for years, but sometimes everyone focused on the same issues in the same way. As attention surges, so does the pressure for policy change. As a result, external shocks periodically shift public debate and public policy.<sup>284</sup>

It could be argued that the State Department designations of the FTOs involved in the Benghazi attacks 16 months after the terrorist attack is not the sort of abrupt public policy change that Kettl was referencing. In the FTO context, however, external forces intervened prompting, and in some cases forcing, action. With respect to Benghazi, further investigation and Congressional hearings are likely. In addition, further scrutiny of the designation and its meaning will likely continue and disputes linger over who was responsible for the attack, and how connected those responsible are to other terrorist

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<sup>281</sup> *PMOI v. U.S. Department of State*, 613 F.3d 220, 230–31 (D.C. Cir. 2010).

<sup>282</sup> See e.g., Shashank Bengali, "US to Adjust Terror List: An Iranian Exile Group Known as the MEK Will Be Taken Off, and Official Says," *Los Angeles Times*, September 22, 2012; Elise Labott, "Clinton to Remove Iranian Exile Group MEK from Terror List," *CNN Wire*, September 21, 2012.

<sup>283</sup> State Department, "Delisting of the Mujahedin-e Khalq," September 28, 2012, <http://www.state.gov/r/pa/prs/ps/2012/09/198443.htm>.

<sup>284</sup> David F. Kettl, *System Under Stress, Homeland Security and American Politics* (Washington, DC: CQ Press, 2007), 130; see also Michael Ignatieff, *The Lesser Evil, Political Ethics in an Age of Terror* (Princeton, NJ: Princeton University Press, 2004), 25–53; Victor V. Ramraj, *Terrorism, Risk Perception and Judicial Review* (Cambridge: Cambridge University Press, 2005), 113–126; Kent Roach, *The Criminal Law and Terrorism* (Cambridge: Cambridge University Press, 2005), 131–151.

networks.<sup>285</sup> As a result, this scenario has been categorized as chaotic under the Cynefin Framework.

The Cynefin Framework, therefore, offers a tool through which the many FTO decisions made over the course of decades can be systematically analyzed and organized. It further provides insight into the nature of the FTO decision-making process and how it has evolved over the course of years, and is a sense-making tool for what may otherwise appear to be a disconnected decision-making process. It also reflects a systematic and logical decision-making process that is fairly predictable, and which further supports the conclusion that the list is the mechanism through which the United States defines terrorism.

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<sup>285</sup> According to a report by the *New York Times* on the Benghazi attack, its investigation “turned up no evidence that Al Qaeda or other international terrorist groups had any role in the assault.” (Kirkpatrick, “A Deadly Mix in Benghazi.”). This conclusion is disputed by other reports. State Department press release notes that the leaders of the newly designated FTOs are Ahmed Abu Khattalah and Sufian bin Qumu. Sufian bin Qumu has been identified as a former driver for a Bin Laden company. Qumu was also apprehended in Pakistan in 2001 and detained for six years at Guantánamo Bay before returning home to Derna, a coastal city near Benghazi known for a high concentration of Islamist extremists. Qumu runs Ansar al-Sharia. Goldman and Gearan, “Senate Report: Attacks on U.S. Compounds in Benghazi Could Have Been Prevented.” Individuals allegedly responsible for the attacks were charged in sealed criminal complaints filed in federal court by the U.S. Attorney’s Office for the District of Columbia, which includes Khattala, who was identified as having ties to al Qaeda. See also June 12, 2012, the Defense Intelligence Agency report titled, “Libya: Terrorists Now Targeting U.S. and Western Interests” that noted the growing ties between al Qaeda and Libyan-based terrorists; July 6, 2012, the CIA report entitled, “Libya: al Qaeda Establishing Sanctuary,” noting al Qaeda affiliated groups and associates are exploiting the permissive security environment in Libya to enhance their capabilities and expand their operational reach, including conducting training, building communication networks, and traveling to and from safe havens.

## IX. THE FTO LIST DEFINES TERRORISM

*Action will delineate and define you.*

—Thomas Jefferson,  
3rd U.S. President

Many authors and academics have commented on the difficulty in defining terrorism.<sup>286</sup> In fact, the many government departments engaged in the homeland security enterprise each utilize different, and sometimes competing, definitions of terrorism.<sup>287</sup>

Title 22, United States Code, Section 2656f(d) defines terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.” Terrorism, as defined in by the Code of Federal Regulations, is: “. . . the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”<sup>288</sup>

The various departments within the U.S. government engaged in the homeland security enterprise each have extrapolated variations on the statutory definitions for use within their own departments, to highlight the focus of each individual department’s counterterrorism efforts. The State Department definition includes “politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”<sup>289</sup> The FBI distinguishes between international and domestic terrorism on its website, and relies on the statutory definition of the terms.<sup>290</sup> Specifically, it relies on the Code of Federal Regulation (CFR) definition as “the unlawful use of force or violence against persons or property to intimidate or

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<sup>286</sup> Alex Schmid, *Political Terrorism; A Research Guide* (New Brunswick, NJ: Transaction Books, 1984), x.; Hoffman, *Inside Terrorism*, 33–34.

<sup>287</sup> Hoffman, *Inside Terrorism*, 30–31, 35.

<sup>288</sup> 28 C.F.R. § 0.85.

<sup>289</sup> 22 USC § 2656f(d).

<sup>290</sup> The Federal Bureau of Investigation, “Definitions of Terrorism in the U.S. Code,” accessed January 19, 2014, <http://www.fbi.gov/about-us/investigate/terrorism/terrorism-definition>.

coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.”<sup>291</sup> The DHS focuses on acts “to intimidate or coerce a civilian population to influence the policy of a government by intimidation or coercion; to affect conduct of a government . . .”<sup>292</sup> The DOD defines it as, “The unlawful use of violence or threat of violence to instill fear and coerce governments or societies. Terrorism is often motivated by religious, political, or other ideological beliefs and committed in the pursuit of goals that are usually political.”<sup>293</sup>

According to Bruce Hoffman, all the definitions used by the United States offer various but incomplete perspectives on terrorism. He notes that the State Department’s definition emphasizes “both the ineluctably political nature of terrorism and the perpetrators’ fundamental ‘subnational’ characteristic. . . .” but is deficient “in failing to consider the psychological dimension of terrorism.”<sup>294</sup> The FBI definition, on the other hand, “does address the psychological dimensions of the terrorist act.”<sup>295</sup> While finding that the FBI’s definition includes the social and political objectives aim of terrorists, Hoffman finds that its definition “offers no clear elucidation of the differences between them to explain this distinction.”<sup>296</sup> The DHS definition focuses on its missions “concentrating on attacks to critical infrastructure and key national resources that could have grave societal consequences.”<sup>297</sup> “The Defense Department definition, significantly, also cites the religious and ideological aims of terrorism alongside its fundamental political objectives – but omits the social dimension found in the FBI’s definition.”<sup>298</sup>

To complicate the issue further, the meaning of the word has changed over time and “as the meaning and usage of the word have changed over time to accommodate the

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<sup>291</sup> 28 C.F.R. § 0.85; National Institute of Justice, “Terrorism,” 2011, <http://www.nij.gov/topics/crime/terrorism/Pages/welcome.aspx>.

<sup>292</sup> Hoffman, *Inside Terrorism*, 31; *Homeland Security Act of 2002*, January 23, 2002, o. FR 5005–7.

<sup>293</sup> Department of Defense. “Dictionary of Military and Associated Terms,” 2010, [http://www.dtic.mil/doctrine/dod\\_dictionary/data/t/7591.html](http://www.dtic.mil/doctrine/dod_dictionary/data/t/7591.html).

<sup>294</sup> Hoffman, *Inside Terrorism*, 32.

<sup>295</sup> *Ibid.*

<sup>296</sup> *Ibid.*, 33.

<sup>297</sup> *Ibid.*

<sup>298</sup> *Ibid.*

political vernacular and discourse of each successive era, terrorism has proved increasingly elusive in the face of attempts to construct one consistent definition.”<sup>299</sup>

While the departments of the U.S. government engaged in the homeland security enterprise use different definitions of the term terrorism, all the departments recognize the FTO list, all have input into the list, and all have a role in addressing the consequences facing the groups added to the list. Furthermore, all the departments recognize the FTO list as constituting the organizations that the United States has determined to be terrorist organizations that threaten the security of the United States. The consequences of an FTO designation includes a prohibition against persons knowingly providing material support or resources to the FTO for which violators can be prosecuted by the Department of Justice (following an investigation by the FBI, DHS, and other departments), the blocking of all property and interests in property of the organization in the United States, or come within the United States, or the control of U.S. persons (by the Treasury Department and DHS),<sup>300</sup> and trying to neutralize each group’s activities abroad (DOD and the intelligence community).

As with the changing definition of terrorism over time, the nature of the groups represented on the FTO list have also evolved. Prior to 9/11, the focus of U.S. counterterrorism foreign policy was on neutralizing the threat posed by communist insurgent groups that might undermine the government of an allied nation. Following 9/11, the U.S. focus shifted to al Qaeda, and its associated and affiliated organizations. The shift in focus was appropriate, and is reflective of what Bruce Hoffman described in *Inside Terrorism* as the changing meaning of terrorism over time.<sup>301</sup> The FTO list then represents what the United States perceives to be those terrorist organizations that pose the greatest risk to this nation, based on the actions taken by the group over time. The changes in the list over time reflect the evolving priorities and the evolving threats, and therefore, reflect how the United States defines terrorism.

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<sup>299</sup> Hoffman, *Inside Terrorism*, 20.

<sup>300</sup> U.S. Department of State, “Secretary of State’s Terrorist Designation of Jundallah.”

<sup>301</sup> Hoffman, *Inside Terrorism*, 3–20.



Thus, while the federal departments engaged in the homeland security enterprise do not have a common definition of terrorism, and academics and authors have not agreed on a single universal definition, the FTO list reflects the criteria used by the United States in actually defining terrorism, by highlighting this nation's priorities and by identifying U.S. enemies. Similarly, as groups are removed from the FTO list, terrorism is further re-defined by identifying shifting U.S. priorities and those groups perceived to no longer be a threat. As noted by Nadav Morag, "it is less important to determine *what* terrorism is than to determine *who* the terrorists are because, clearly, legal sanctions cannot be applied to the phenomenon of terrorism but can be applied to terrorist organizations and individual terrorists."<sup>302</sup>

As determined by the current FTO list, the United States defines terrorism as the following.

- al Qaeda, its affiliates, and its associates
- any organization that lends support or promotes the interests of al Qaeda
- any organization that attacks a U.S. interest, such as a U.S. embassy, or attacks or harms a U.S. citizen
- any organization that attacks Israel or attempts to undermine its existence
- any organization that seeks to undermine a peace process advanced or advocated by the United States
- any organization that seeks to undermine a country in a geographical location or region is strategically important to addressing U.S. counterterrorism efforts

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<sup>302</sup> Morag, *Comparative Homeland Security, Global Lessons*, 68.

## **X. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

*A government for the people must depend for its success  
on the intelligence, the morality, the justice  
and the interest of the people themselves.*

—Grover Cleveland,  
24 U.S. President

This research was aimed at determining whether the nonstatutory factors that weigh in a secretary of state's FTO decisions could be identified. Through a quantitative and qualitative analysis of the State Department's country reports that describe the FTO decisions made since 1997, the nonstatutory factors were identified. These factors include whether a group is affiliated with or supports al Qaeda, attacks an U.S. citizen, embassy, or interest; attacks or undermines Israel, thwarts a peace process advanced by the United States, or undermines a country strategically important to addressing U.S. counterterrorism efforts. Using the Cynefin Framework, this research further explored the nonstatutory factors as applied in the context of complex counterterrorism policy decisions. The nonstatutory factors also form the basis upon which the United States defines terrorism.

This chapter examines whether the FTO process should be modified, since this research indicates the FTO list is a logical representation of U.S. counterterrorism policy. The literature reflects that the FTO list is regularly criticized for failing to apply consistent criteria, for being too political, and for being a vehicle through which the Executive Branch will abuse its power. Greater confidence in the FTO designation procedure could be developed by publicly identifying the nonstatutory factors that influence the decisions, by providing information about the application of these factors, by reviewing the FTO designations with greater frequency, and by providing detailed and more consistent information about each FTO.

## A. THE LITERATURE VS. THE RESEARCH

The research presented indicates that the determinations about which organizations are added to the FTO list is based on a fairly logical and systematic approach. As demonstrated in the literature review, the FTO list is, nevertheless, criticized regularly and is considered unfair by many.

Subjective justice theory provides insight into the apparent conflict between the research results and the criticisms found in the literature. This theory suggests that people are “not always accurate in their assessments” of justice due to their perceptions.<sup>303</sup> While people tend to strive for justice in their interpretation of issues (under the just world theory),<sup>304</sup> psychological distortion can come about through the selection, exaggeration, or minimization of the factors weighed in the justice calculation.<sup>305</sup>

With respect to the FTO list, the role of the procedures used may be influencing perception of the list and the assessment about whether it is fair. As noted earlier, the nonstatutory factors that influence the decision-making process have never been identified by the secretary of state, which has led to speculation about the factors the secretary of state really relies upon in making FTO decisions. In addition, the factors used to evaluate whether an organization is a threat to the security of the United States (the third statutory factor) have never been identified publicly, which has also led to further speculation, concerns about secrecy and the potential abuse of power, and ultimately, the perception that the FTO list is unfair.

Procedural justice, or the process through which decisions are made, is an important influence on the assessment of fairness.<sup>306</sup> Procedural justice includes a wide range of issues, such as how people feel they have been treated, whether they think they have been listened to, and whether their view-points have been given respect and consideration. A 2002 study by Tyler and Huo concluded that people accept the decisions

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<sup>303</sup> Fathali M. Moghaddam, *Multiculturalism and Intergroup Relations, Psychological Implications for Democracy in Global Context* (Washington, DC: American Psychological Association, 2008), 108.

<sup>304</sup> *Ibid.*, 79–80.

<sup>305</sup> *Ibid.*, 111.

<sup>306</sup> *Ibid.*, 113.

of legal authorities, even if they consider the decisions unfavorable, when they believe the procedure used was fair.<sup>307</sup> Perceived unfairness in the exercise of authority can lead to alienation, defiance, and noncooperation.<sup>308</sup>

Utilizing these theories, trust in the fairness and integrity of the procedures used to designate organizations could play an important role in how the FTO list is perceived. “Clearly, trust and other relational values profoundly influence perceptions of justice . . . [and] confidence in authorities.”<sup>309</sup> Greater confidence in the FTO designation procedure could be developed by publicly identifying the nonstatutory factors that influence the decisions (and eliminate speculation), articulating these factors clearly, and providing information to the public about these factors.

Despite the benefits that could be obtained from modifying the process, it could be argued that the U.S. FTO designation process does not need to be modified and maintaining the current system as it is currently functioning is appropriate. The U.S. FTO designation system is not as broad as other designation systems around the world, such as the UK model that designates those who promote the “glorification of terrorism” and prohibits the wearing of clothing or carrying of articles that arouse suspicion. In contrast to these broad systems, the U.S. model is much narrower and more clearly defined. Even those who criticize the list rarely claim that a group on the list has not committed terrorist activities.

The Executive Branch also has forceful arguments it could assert that the current designation process is not flawed and that no abuse of executive power occurs when it makes foreign policy decisions. The Executive Branch could effectively argue that the FTO designation process is designed to have flexible standards to allow the secretary of state the exclusive authority to weigh a variety of factors that will serve the diplomatic and strategic interests of the United States. The secretary of state may weigh the identical

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<sup>307</sup> Tom R. Tyler and Yeun J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russell Sage Foundation, 2002).

<sup>308</sup> Jason Sunshine and Tom R. Tyler, “The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing,” *The Law and Society Review* 37, no. 3 (2003): 514–515.

<sup>309</sup> *Ibid.*

factors with two different groups and reach contrary conclusions about whether it should be designated, and such a result can be appropriate given the particular situation. Such is the nature of complex foreign policy decisions, to which the Executive Branch has considerable discretion. Significantly, no evidence exists that any FTO decision made by the secretary of state was detrimental to the foreign policy or diplomatic interests of the United States.

While an argument can be made to maintain the status quo and not alter the designation process in any way, this alternative is not practical since the designation process has been subject to increasing criticism and involvement by the legislative and judicial branches. Without changes, they may increasingly insert themselves into the process and increase oversight to ensure that “the intelligence community is properly carrying out its functions, that is whether the community is asking the right questions, responding to policy makers’ needs, [and] being rigorous in its analysis. . . .”<sup>310</sup> In addition, absent a change, the charges of the politicization of the designation process will continue and may increase.<sup>311</sup> While any designation process will and can be criticized, addressing some of the procedural criticisms can make the U.S. process more robust, and procedural justice theory suggests that such changes could instill greater confidence in the FTO designation process. In the current homeland security environment, in which a growing lack of confidence in the homeland security enterprise is occurring, due in part to a perception of government overreaching,<sup>312</sup> this situation is an opportunity for the homeland security enterprise to gain public confidence through offering additional information on process and procedures. As a result of all these considerations, the recommendations listed as follows should be considered.

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<sup>310</sup> Lowenthal, *Intelligence, From Secrets to Policy*, 217, 223.

<sup>311</sup> Johnson and Wirtz, *Strategic Intelligence, Windows Into a Secret World*.

<sup>312</sup> Pew Research, Center for the People & the Press, “Few See Adequate Limits on NSA Surveillance Program,” July 26, 2013, <http://www.people-press.org/2013/07/26/few-see-adequate-limits-on-nsa-surveillance-program/>; Byron Acohido, “Most Americans Oppose NSA Surveillance,” *USA Today*, January 16, 2014, <http://www.usatoday.com/story/cybertruth/2014/01/16/most-americans-oppose-nsa-surveillance/4516291/>; Emily Swanson, “Poll: NSA Oversight Is Inadequate Most Americans Say,” *Huffington Post*, August 17, 2013, [http://www.huffingtonpost.com/2013/08/17/nsa-oversight-poll\\_n\\_3769727.html](http://www.huffingtonpost.com/2013/08/17/nsa-oversight-poll_n_3769727.html).

## **B. SUGGESTED MODIFICATIONS TO THE FTO DESIGNATION PROCESS**

### **1. Identify and Define the Nonstatutory Factors that Influence the FTO Designation Process**

The secretary of state has never publicly identified the nonstatutory factors that influence the decision-making process, which has led to speculation about the factors the secretary of state really relies upon in making FTO decisions, as well as to inter-agency disputes about the key factors that should be weighed in designating FTOs. These internal disputes have delayed the designation process,<sup>313</sup> which creates the perception that the FTO designation process is too long and cumbersome, and fails to be nimble enough to address the rapidly changing terrorism environment.

The benefits to identifying the nonstatutory factors include creating greater clarity about the key policy factors to be analyzed, developing consensus as to the specific factors used among members of the intelligence community, streamlining the process so that it is less time consuming, and avoiding controversy over specific designations. Further, by identifying the nonstatutory factors used to determine an FTO, the courts and Congress can receive the assurances they need that the designation process is thorough and expeditious, and may minimize the concern that political issues are overly influencing the process.

Many of the nonstatutory factors that already weigh in the calculation to add an organization to or remove it from the FTO list have been identified through this research. These factors include whether the foreign organization or its affiliates have done the following.

- Attacked the United States at home or abroad. Particular interest will be given to those foreign organizations that:
  - killed U.S. citizens
  - attacked a U.S. embassy

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<sup>313</sup> Washington Post, "Obama Administration Divided Over Designating Haqqani Network As a Terrorist Group," August 31, 2012, [http://articles.washingtonpost.com/2012-08-31/world/35493151\\_1\\_haqqani-network-haqqani-group-terrorist-group](http://articles.washingtonpost.com/2012-08-31/world/35493151_1_haqqani-network-haqqani-group-terrorist-group).

- Attacked an allied nation, or another strategic interest of the United States. Particular interest will be given to those foreign organizations that:
  - are based in countries believed to be training grounds, hubs, or breeding grounds for terrorism, and to those countries whose legal systems appear to be challenged in handling terrorism issues effectively
  - attack Israel, seek to undermine the existence of the country, or otherwise, seek to challenge the stability of Israel
  - is a terrorist organization located in a geographic region of strategic importance to counterterrorism efforts
- Are affiliated or associated with al Qaeda. Particular interest will be given to those foreign organizations that:
  - attack members of the U.S. military
  - develop as a result of the U.S. military presence in a particular country
- Are committing terrorist acts aimed at undermining peace efforts lead by or promoted by the United States (peace process detractors)
- Are named on another terrorist list maintained by the United States and its allies, or has a relationship to an individual or entity on one of the other lists. Particular interest will be given to those foreign organizations that:
  - have its leaders or founders, or the organization itself, named to other terrorist lists maintained by the United States
  - are aligned with or are receiving support from a designated state sponsor of terrorism, particularly from Syria and Iran
  - are aligned with other terrorist organizations named to the FTO list or other terrorist lists maintained by the United States
  - are designated on the terrorist lists of allied foreign countries, particularly the United Kingdom, Canada and Australia
  - are named to the terrorist lists of organizations of foreign nations to which the United States is aligned, such as the EU and the United Nations
  - have its leaders, members or supporters, arrested, indicted or subjected to other judicial process in the United States or elsewhere

- Are part of a network of resources designed to commit violence<sup>314</sup>

Conversely, the factors weighed when determining whether an FTO should be removed from the list include whether the group has ceased committing terrorist acts for a period of five or more years, no longer poses a threat to the United States, has renounced terrorism, has engaged in a peace process (particularly where the peace process is led by or promoted by the United States), or has been dismantled due to arrests or deaths of its leaders.

As noted earlier, other countries, such as the United Kingdom and Australia developed and publicly identified the nonstatutory factors that they weigh in their respective designation processes. The nonstatutory factors presented by those countries are more generic in nature than what is suggested in this thesis. For example, the U.K. factors include the nature and scale of an organization's activities, the specific threat that the organization poses to the United Kingdom, the extent of the organization's presence in the United Kingdom, and the need to support other members in the international community in the global fight against terrorism. Australia identified the factors as the organization's engagement in terrorism, the organization's ideology, links to other terrorist groups, links to Australia, threats to Australia's interests, listing by the U.N. or like-minded countries, and engagement in peace processes.

It is recommended that the State Department identify the nonstatutory factors, to include the factors identified in this research. Namely, whether the group attacked the United States at home or abroad, attacked an allied nation or other strategic interest of the United States, is affiliated with al Qaeda, committed terrorist acts aimed at undermining peace efforts led or promoted by the United States, are named on another terrorist list maintained by the U.S. or its allies, are named on the terrorist list of organizations of foreign nations to which the United States is aligned, and has its leaders, members, supporters arrested, indicated or subjected to judicial process in the United States or elsewhere. This level of detail about designation decisions is recommended because of

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<sup>314</sup> Extrapolated from U.S. Department of State, *Country Report on Terrorism 2011*; U.S. Department of State, *Country Report on Terrorism 2005*; U.S. Department of State, *Country Report on Terrorism 2006*; U.S. Department of State, *Patterns of Global Terrorism 2002*.



the elevated position of the United States in the global counterterrorism effort and due to concerns about the United States using and abusing its power. Providing details about the decision-making process and demonstrating the logical nature of the FTO decisions will lend credibility to the U.S. approach to this aspect of the homeland security enterprise.

## **2. Publish a Robust Explanation or Justification for the Designation**

The United States currently publishes FTO information in the annual country reports. These annual reports are generally published in the middle of each year by the State Department, to reflect the terrorist activities that occurred in the prior calendar year. For example, the 2012 country reports were published in July 2013. The FTO section of the country reports categorizes the information for each FTO and lists the following information: the date the organization was designated, a description of the FTO, a description of the FTO's activities in the last calendar year, and occasionally, information about its prior terrorist activities—when those activities are particularly noteworthy, the location of the FTO's activities, the FTO's strength, and the FTO's sources of funding. The information contained within each of these categories varies in terms of details each year, and it is necessary to read all the country reports from prior years to obtain complete information about each organization, the reasons the group is on the FTO list, and the evolving nature of the threat posed by each group.

Providing more complete and detailed information in each annual country report will result in designation details being made available in a consistent manner that explain the basis for the FTO determinations. Such a methodology can avoid the need to review all prior country reports to have a complete picture of why an individual group was designated and why it remains on the list. In addition, such detail may avoid the perception that the information on which the list is based is dated. Furthermore, it is recommended that information provided in the press releases issued following the designation of the FTO be included in the country reports. Frequently, the press releases issued provide additional details, such as other terrorist lists on which leaders of the FTO appear or other terrorist lists on which the FTO appears, but this information is frequently

not included in the country reports. It is recommended that the country reports become a more comprehensive source for the information that supports the FTO designation.

Furthermore, it is recommended that the United States adopt a public disclosure system that makes the information supporting the designation more easily accessible. While the State Department has a website that lists the current FTOs, as well as those groups that have been delisted, it is necessary to download the country reports to gain access to the information supporting the designation currently available. The information should also be available as link to the FTO list on the website, as the Australian government provides on its website.

### **3. Clarify the Nature of the Evidence that the Secretary of State Will Weigh in the Designation Process**

Clarifying that the secretary of state will consider the quality and reliability of the information relied upon in the designation process could help address the concerns that the Secretary relies upon unverified and potentially unreliable information in making designation decisions.

While considerable classified information is considered in the FTO designation process, considerable open source material is available as well. Identifying open source materials relied upon in the designation process can assist in gaining credibility and in instilling confidence in the designation process. Further, clarifying the factors that will be considered in relying on classified information, such as establishing that only corroborated information will be relied upon or otherwise demonstrating that the nature of the information used will be weighed in the decision-making process, can assist in lending credibility to the FTO designation procedures.

### **4. Require More Frequent Review of the FTO List**

It is also recommended that a more frequent review of the organizations on the FTO list take place. Currently, FTOs are reviewed every five years unless an organization files a petition to be delisted, in which case, the FTO designation is reviewed sooner. The complexity and evolving nature of the counterterrorism threat, and the constant emergence of new terrorist organizations and splinter groups, suggest that a more

frequent review of the FTOs would offer benefits. The benefits to conducting the review more frequently include the following.

- offering greater insight and more up-to-date information into the nature of the threats the united states faces by the organizations on the list
- ensuring that the organizations designated are actively engaged in terrorism or pose an ongoing threat to the security of the united states
- instilling greater confidence that the FTO list reflects the current priorities of the united states, and not simply a reflection of decisions made years ago without any relevance to current U.S. threats
- encouraging the presentation of more current information about every FTO in the annual country reports.

A more frequent review process is a change that can be implemented at the discretion of the secretary of state, and requires no legislative action, as long as the five-year period, at minimum, is satisfied.

### **C. IMPLEMENTATION**

The recommendations are designed to provide greater transparency in government and a greater understanding of the FTO designation process. In addition, they are designed to provide greater clarity into U.S. security interests in determining whether certain organizations pose a threat to the United States and the reasons why the secretary of state made that determination.

Implementation of these recommendations should be relatively easy to accomplish. First, the information is available through open source data, and the information can currently be obtained by doing an analysis of the existing State Department country reports, as was done in this research. While the information is in the reports, it is not organized in any comprehensive manner and it is not offered in a systematic or easily identifiable way. It is difficult and time-consuming for the public to extract the information from the multiple country reports in which portions of the information is contained. The proposed changes are designed to collect the existing information from the annual reports, organize it in a meaningful and consistent manner, make the designation information easily accessible, and identify these as the nonstatutory factors that weigh into the FTO designation process.

The steps to the process should include, and progress can be measured by completing the following.

- developing the list of the nonstatutory factors
- ensuring that the secretary of state concurs with the list
- meeting with the intelligence community in an effort to develop consensus with the nonstatutory factors and to ensure that the information being revealed does not negatively impact security issues
- meeting with Congressional representatives in an effort to develop consensus on the factors, and to develop an appreciation for the disclosure of more information about the process
- meeting with other stakeholders, such as critics of government secrecy regulations, and explain the nonstatutory factors that influence the FTO decision process (attempt to gain consensus for the information being disclosed, or to generate positive statements to be made about the alterations to the process)
- developing the presentation for disclosure of the information on the State Department website and in the country reports, and comparing the presentation format and information to disclosures made by allied countries (in an effort to develop consistency in disclosures made and maximize transparency)
- publishing the list of nonstatutory factors used by the secretary of state and providing information on why those factors are relevant to the national security interests of the United States
- disclosing information about the nonstatutory factors used when new groups are added to the FTO list along with a description of how those factors influenced the designation process
- monitoring the response to the changes

The proposed modifications are designed to assist the public, the courts, and Congress in gaining a better understanding and appreciation of the FTO designation process and the decisions made, enhance confidence that the Secretary will consider the quality and reliability of the evidence in determining the FTO designations, develop greater transparency in government at a time when great debate and concern is occurring over the government's counter-terrorism activities, ensure that the FTO list better reflects the organizations that present current and ongoing threats to the United States, and create a designation process able to be more nimble in identifying the development of emerging terrorist organizations.

The cost for implementing the recommendations is expected to be minimal, since the information is readily available to the State Department. Much of the information appears to already be used in the designation process, and it is just a matter collecting the information and publishing it in a consistent and easily accessible format. Implementation is at the discretion of the Secretary and will not require any legislative action.

#### **D. SUGGESTIONS FOR FUTURE RESEARCH**

The research and recommendations offered represent a limited review of the FTO list. Additional research could add to the overall understanding of the list and its impact on U.S. counterterrorism efforts. Suggested areas for future research include the following.

- The FTO list should be monitored for changes, and whether the changes reflect a change in U.S. counterterrorism policy. The FTO list is a constantly evolving list, where even minor additions or deletions could reflect a change in direction in U.S. counterterrorism efforts.
- The research presented in this thesis only reviewed a limited set of State Department documents, namely the country reports. Many more reports, public statements, and press releases are available that could be reviewed that will add more context to the designations and the reasons certain groups are added to or omitted from the FTO list.
- Litigation has occurred involving the FTO designations, mostly by the MEK and the PKK. A review of the litigation, and the government statements made in briefings and to the courts, may also add greater context to the FTO decision-making process.
- The Afghan war against the Soviets was a unifying force for many terrorist groups. Additional study of the U.S. wars in Afghanistan and Iraq could be insightful to determine the long-term impact of wars on U.S. and global counterterrorism efforts.
- An evaluation and analysis of terrorist organizations that have not been designated as FTOs could add greater insight into the factors the United States considers, and does not consider, in the FTO evaluation process.
- An analysis of the impact FTO designations have on terrorist groups would assist in determining the nature and extent of the impact on FTOs, and may assist in determining the groups against which the designation would have the greatest impact.

## **E. CONCLUSION**

The recommendations presented are aimed at developing clarity and transparency in the FTO designation process, with the goal of gaining confidence in the process and the designation decisions. Implementation of the recommendations will not detract from the authority of the Executive Branch, but clarify how the Executive Branch exercises its authority without compromising its independence or its foreign policy decisions.

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## APPENDIX A. THE FTO LIST (AS OF JANUARY 2014)

The following data is from the U.S. Department of State, “Foreign Terrorist Organizations,” at <http://www.state.gov/j/ct/rls/other/des/123085.htm>.

Designated Foreign Terrorist Organizations	
Date Designated	Name
10/8/1997	Abu Nidal Organization (ANO)
10/8/1997	Abu Sayyaf Group (ASG)
10/8/1997	Aum Shinrikyo (AUM)
10/8/1997	Basque Fatherland and Liberty (ETA)
10/8/1997	Gama’a al-Islamiyya (Islamic Group) (IG)
10/8/1997	HAMAS
10/8/1997	Harakat ul-Mujahidin (HUM)
10/8/1997	Hizballah
10/8/1997	Kahane Chai (Kach)
10/8/1997	Kurdistan Workers Party (PKK) (Kongra-Gel)
10/8/1997	Liberation Tigers of Tamil Eelam (LTTE)
10/8/1997	National Liberation Army (ELN)
10/8/1997	Palestine Liberation Front (PLF)
10/8/1997	Palestinian Islamic Jihad (PIJ)
10/8/1997	Popular Front for the Liberation of Palestine (PFLP)
10/8/1997	PFLP-General Command (PFLP-GC)
10/8/1997	Revolutionary Armed Forces of Colombia (FARC)



<b>Designated Foreign Terrorist Organizations</b>	
<b>Date Designated</b>	<b>Name</b>
10/8/1997	Revolutionary Organization 17 November (17N)
10/8/1997	Revolutionary People's Liberation Party/Front (DHKP/C)
10/8/1997	Shining Path (SL)
10/8/1999	al-Qa'ida (AQ)
9/25/2000	Islamic Movement of Uzbekistan (IMU)
5/16/2001	Real Irish Republican Army (RIRA)
9/10/2001	United Self Defense Forces of Colombia (AUC)
12/26/2001	Jaish-e-Mohammed (JEM)
12/26/2001	Lashkar-e Tayyiba (LeT)
3/27/2002	Al-Aqsa Martyrs Brigade (AAMB)
3/27/2002	Asbat al-Ansar (AAA)
3/27/2002	al-Qaida in the Islamic Maghreb (AQIM)
8/9/2002	Communist Party of the Philippines/New People's Army (CPP/NPA)
10/23/2002	Jemaah Islamiya (JI)
1/30/2003	Lashkar i Jhangvi (LJ)
3/22/2004	Ansar al-Islam (AAI)
7/13/2004	Continuity Irish Republican Army (CIRA)
12/17/2004	Libyan Islamic Fighting Group (LIFG)
12/17/2004	al-Qaida in Iraq (AQI)
6/17/2005	Islamic Jihad Union (IJU)
3/5/2008	Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B)

<b>Designated Foreign Terrorist Organizations</b>	
<b>Date Designated</b>	<b>Name</b>
3/18/2008	al-Shabaab (AS)
5/18/2009	Revolutionary Struggle (RS)
7/2/2009	Kata'ib Hizballah (KH)
1/19/2010	al-Qa'ida in the Arabian Peninsula (AQAP)
8/6/2010	Harakat ul-Jihad-i-Islami (HUJI)
9/1/2010	Tehrik-e Taliban Pakistan (TTP)
11/4/2010	Jundallah
5/23/2011	Army of Islam (AOI)
9/19/2011	Indian Mujahedeen (IM)
3/13/2012	Jemaah Anshorut Tauhid (JAT)
5/30/2012	Abdallah Azzam Brigades (AAB)
9/19/2012	Haqqani Network (HQN)
3/22/2013	Ansar al-Dine (AAD)
11/14/2013	Boko Haram
11/14/2013	Ansaru
12/19/2013	al-Mulathamun Battalion
1/13/2014	Ansar al-Shari'a in Benghazi
1/13/2014	Ansar al-Shari'a in Darnah
1/13/2014	Ansar al-Shari'a in Tunisia

<b>Delisted Foreign Terrorist Organizations</b>		
<b>Date Removed</b>	<b>Name</b>	<b>Date Originally Designated</b>
10/8/1999	Democratic Front for the Liberation of Palestine - Hawatmeh Faction	10/8/1997
10/8/1999	Khmer Rouge	10/8/1997
10/8/1999	Manuel Rodriguez Patriotic Front Dissidents	10/8/1997
10/8/2001	Japanese Red Army	10/8/1997
10/8/2001	Tupac Amaru Revolution Movement	10/8/1997
5/18/2009	Revolutionary Nuclei	10/8/1997
10/15/2010	Armed Islamic Group (GIA)	10/8/1997
9/28/2012	Mujahedin-e Khalq Organization (MEK)	10/8/1997
5/28/2013	Moroccan Islamic Combatant Group (GICM)	10/11/2005

## **APPENDIX B. THE FTO LIST (AS OF SEPTEMBER 11, 2001)**

This list is extrapolated from U.S. Department of State, “Patterns of Global Terrorism 1997–2001”; see also Federation of American Scientists, “Fact Sheet: Secretary of State Designates Foreign Terrorist Organizations (FTOP’s),” October 5, 2001, at <https://www.fas.org/irp/news/2001/10/fr100501.html>.

<b>NAME</b>	<b>YEAR DESIGNATED/ DELISTED</b>
Abu Nidal Organization (ANO)	10/8/97
Abu Sayyaf Group (ASG)	10/8/97
Al-Qa’ida (AQ)	10/8/99
Armed Islamic Group (GIA)	10/8/97 Delisted 10/15/10
Aum Shinrikyo (Aum)	10/8/97
Basque Fatherland and Liberty (ETA)	10/8/97
Gama’a al-Islamiyya (IG)	10/8/97
Hamas	10/9/97
Harakat ul-Mujahideen (HUM)	10/8/97
Hizballah	10/8/97
Islamic Movement of Uzbekistan (IMU)	9/25/00
Japanese Red Army (JRA)	10/8/97 Delisted 10/8/01
Kahane Chai	10/8/97
Kurdistan Workers’ Party (PKK)	10/8/97
Liberation Tigers of Tamil Eelam (LTTE)	10/8/97

<b>NAME</b>	<b>YEAR DESIGNATED/ DELISTED</b>
Mujahadin-e Khalq Organization (MEK)	10/8/97 Delisted 9/28/12
National Liberation Army (ELN)	10/8/97
Palestine Liberation Front—Abu Abbas Faction (PLF)	10/8/97
Palestine Islamic Jihad—Shaqaqi Faction (PIJ)	10/8/97
Popular Front for the Liberation of Palestine (PFLP)	10/8/97
Popular Front for the Liberation of Palestine-General Command (PFLP-GC)	10/8/97
Real IRA (RIRA)	5/16/01
Revolutionary Armed Forces of Colombia (FARC)	10/8/97
Revolutionary Nuclei	10/8/97 Delisted 5/18/09
Revolutionary Organization 17 November (17N)	10/8/97
Revolutionary People's Liberation Party/Front (DHKP/C)	10/8/97
Shining Path (SL)	10/8/97
Tupac Amaru Revolutionary Movement (MRTA)	10/8/97 Delisted 10/8/01
United Self-Defense Forces of Colombia (AUC)	9/10/01

## **APPENDIX C. THE ORIGINAL FTO LIST (AS OF OCTOBER 8, 1997)**

The following list is from the U.S. Department of State, “Patterns of Global Terrorism 1997”; see also Hellenic Resources Networks, “USIA—Fact Sheet: Designation of Foreign Terrorist Organizations,” October 8, 1997, at [http://www.hri.org/news/usa/usia/1997/97-10-08\\_1.usia.html](http://www.hri.org/news/usa/usia/1997/97-10-08_1.usia.html).

<b>NAME</b>	<b>YEAR DESIGNATED/ DELISTED</b>
Abu Nidal Organization (ANO)	10/8/97
Abu Sayyaf Group (ASG)	10/8/97
Al-Jihad (later merged into al Qaeda)	10/8/97
Armed Islamic Group (GIA)	10/8/97 Delisted 10/15/10
Aum Shinrikyo (Aum)	10/8/97
Basque Fatherland and Liberty (ETA)	10/8/97
Democratic Front for the Liberation of Palestine -Hawatmeh Faction (DFLP)	10/8/97 Delisted 10/8/99
Gama’a al-Islamiyya (IG)	10/8/97
Hamas	10/9/97
Harakat ul-Mujahideen (HUM), aka Harakat ul-Ansar (HUA)	10/8/97
Hizballah	10/8/97
Japanese Red Army (JRA)	10/8/97 Delisted 10/8/01
Kahane Chai	10/8/97
Kach (which was later merged into Kahane Chai)	10/8/97
Khmer Rouge	10/8/97 Delisted 10/9/99

<b>NAME</b>	<b>YEAR DESIGNATED/ DELISTED</b>
Kurdistan Workers' Party (PKK)	10/8/97
Liberation Tigers of Tamil Eelam (LTTE)	10/8/97
Manuel Rodriguez Patriotic Front Dissidents	10/8/97 Delisted 10/8/99
Mujahadin-e Khalq Organization (MEK)	10/8/97 Delisted 9/28/12
National Liberation Army (ELN)	10/8/97
Palestine Liberation Front—Abu Abbas Faction (PLF)	10/8/97
Palestine Islamic Jihad—Shaqaqi Faction (PIJ)	10/8/97
Popular Front for the Liberation of Palestine (PFLP)	10/8/97
Popular Front for the Liberation of Palestine-General Command (PFLP-GC)	10/8/97
Revolutionary Armed Forces of Colombia (FARC)	10/8/97
Revolutionary Nuclei, aka Revolutionary People's Struggle (formerly ELA)	10/8/97 Delisted 5/18/09
Revolutionary Organization 17 November (17N)	10/8/97
Revolutionary People's Liberation Party/Front (DHKP/C)	10/8/97
Shining Path (SL)	10/8/97
Tupac Amaru Revolutionary Movement (MRTA)	10/8/97 Delisted 10/8/01

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